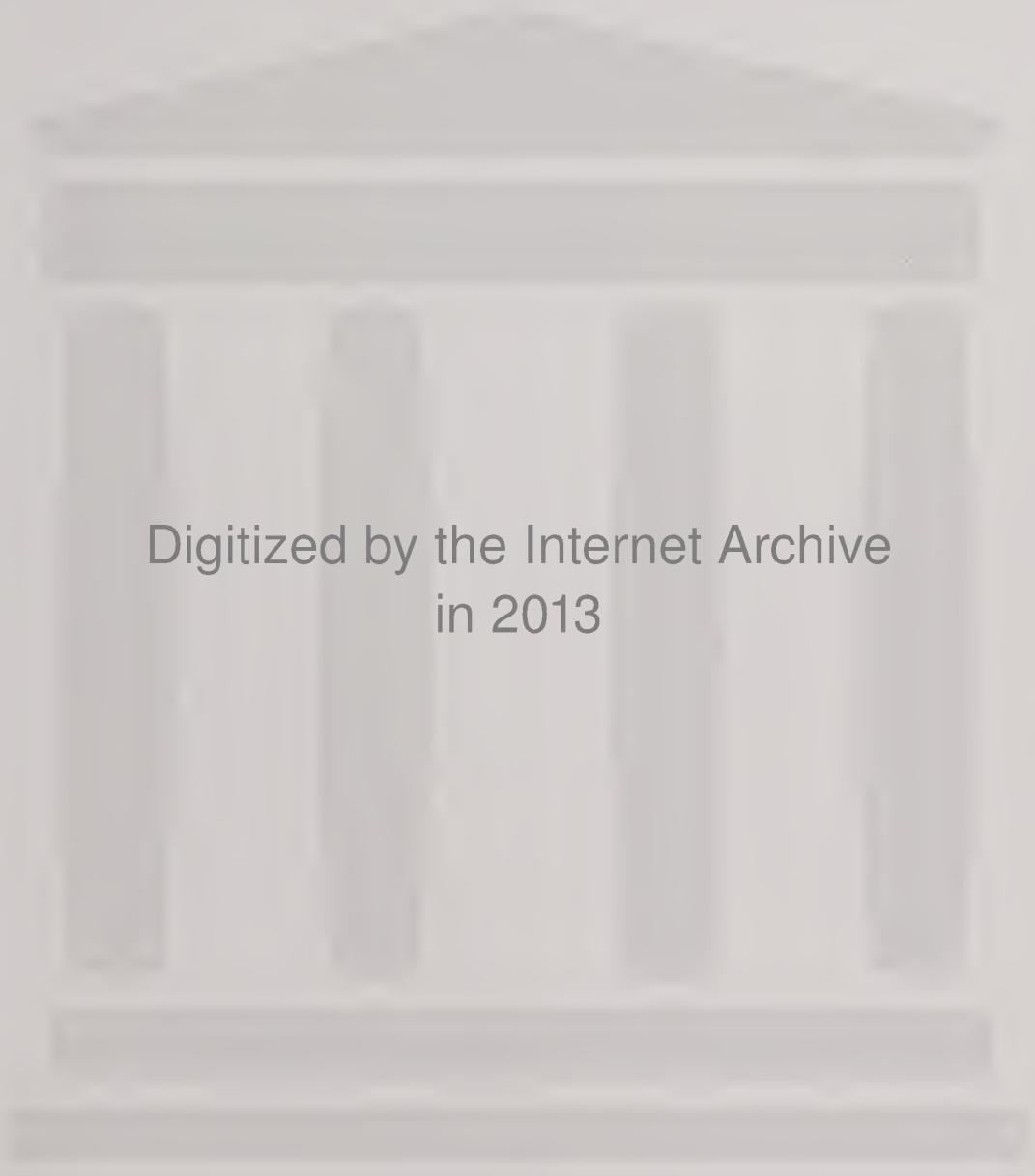

Maryland. Constitutional Convention Commission.

Committee on the Declaration of Rights and Elective Franchise.

Reports, 1st - 9th.

C O N S T I T U T I O N A L C O N V E N T I O N C O M M I S S I O N

FIRST REPORT

OF THE

COMMITTEE ON THE DECLARATION OF RIGHTS AND ELECTIVE FRANCHISE

I. The Declaration of Rights.

The character of a Declaration of Rights is such that it is difficult to isolate policy questions peculiar to or confined to that part of a constitutional document. For that reason the Committee proposes to set out certain principles and guidelines by which it intends to be governed. The Committee here submits these principles and guidelines for the Commission's consideration.

In a sense, a Declaration of Rights in a state constitution is a plain manifestation of the fundamental constitutional theorem that a state government is a government of plenary powers, possessing all powers not delegated to the federal government and limited in the exercise of those powers only to the extent and in the manner provided in the state constitution.[1] "The state constitution is thus a document of limitation, not of grant or delegation. . . .",[2] and the designation Declaration of Rights emphasizes that, "These are rights that are 'declared' and reserved by the people, not rights created by the Constitution."[3] The concept of a state government of plenary power in no way diminishes the principle of popular sovereignty forcefully expressed in every Maryland Constitution since 1776. A state constitution is, in the last analysis, designed to fashion means for the orderly exercise of the popular will and at the same time to reserve and declare those rights of the people which no official, no agency, no transient majority may transgress. Only in a broad and rhetorical sense do the people "delegate" power to the state government. Formulation of a constitution is more an act of creation -- creation of a vehicle by which the power of a self government is to be exercised. It is in this sense that the Maryland Court of Appeals can note that the right of the Legislature to act is not drawn from any particular constitutional grant and, at the same time, that the Legislature can act at all only on behalf of the people whose agent it is.

> "The right of the Legislature to exercise the police power is not referable to any single provision of the Constitution. It inheres in and springs from the nature of our institutions, and so the limitations upon it spring from the same source as well as those expressly set out in the Constitution. The Legislature at all times exercises a delegated power, and its action is always subject to the test of reasonableness. The sovereign power remains in the people."[4]

Implicit in this passage, and indeed expressed in Article 7 of the present Declaration of Rights,[5] is recognition that the Legislature is the principal agency through which the plenary powers of government are exercised; and is, thus, the agency to which the greatest freedom of action is conceded. Correspondingly, those rights which the people wish to hold free from any diminution must be clearly defined and so formulated as to be capable of protection against even legislative interference. It is a part of our constitutional tradition that the judiciary is the ultimate protection against any attempt by any agency to diminish rights which the people have designated as inviolable -- ". . . the principle deeply rooted in American constitutional history and experience that the basic rights of the citizen are of such importance as to require recognition in the fundamental law and thereby receive the added protection furnished by the process of judicial review."[6] From this background come the first two general principles by which this Committee is to be guided.

A. The expressions of popular sovereignty presently found in somewhat fragmentary form in Articles 1, 4, 6 and 7 are to be consolidated into a single coherent statement. That statement shall emphasize the idea now expressed in Article 7 that the Legislature, the most directly representative and responsive arm of the government, shall be the principal agency for exercise of the power of government.

B. To a very large extent the Declaration of Rights shall be limited to those rights which the people wish to hold absolutely inviolable against interference by any agency of the government -- rights capable of protection by the process of judicial review. Stated the other way, The Declaration of Rights shall, as a matter of general practice, avoid statements of aspirations and principles which, though they might provide guidance or objectives for agencies of the state government, are incapable of actual enforcement. Some illustrations are clearly in order.

1. A disposition has been shown in some recent constitutional drafting to include in Declarations or Bills of Rights expressions of social or economic rights conceived to be within the proper sphere of government interest; i.e., welfare relief, old-age assistance, health benefits, public housing, public education and recreation. Such provisions depart from the traditional notion of a Declaration expressing restraints on government and attempt to express individual rights "premised on claims of a duty owed by the state to assure certain benefits to its citizens."[7]

   a. It is submitted that the necessarily unenforceable character of such propositions makes them inappropriate for inclusion in a Declaration of Rights. "Rights of this kind, stated in a constitution, are 'programmatic' in character. They are not judicially enforceable and require legislative acts for their implementation."[8]

   b. Efforts to introduce enforceability by specifying details of the general "rights" described produces a plan or arrangement which in future years and changed conditions can be altered only by the difficult process of constitutional amendment.[9]

   c. If the state constitution recognizes the state government as one of plenary powers, the objectives sought in such general provisions may be best and most consistently accomplished by express acknowledgement that the Legislature has the power and the duty to provide for the general welfare and to adopt means suitable to that end.[10]

2. In addition, in some recent constitutional conventions and in some state constitutional drafting sentiment has been exhibited for including provisions in Declarations or Bills of Rights relating to rights and duties of person against person in contrast to the traditional concept of rights reserved by the people against actions by the government. Chief among these are provisions relating to employer-employee relations (i.e., those assuring the right to bargain collectively and corresponding declarations of a right to work without assuming labor union obligations); and those related to the obligations of private persons to act in a nondiscriminatory manner in such things as employment and housing.[11]

a. Such provisions, it should be noted, represent the widest departure from the idea and usual function of a Declaration of Rights as a reservation of rights of citizens against a government otherwise invested with plenary powers.

b. Such provisions, too, are incapable of judicial enforcement unless expressed in significant detail. The result, again, is a relatively inflexible plan or arrangement which can be changed, as change is dictated, only by constitutional amendment.

3. In all matters of this kind it may be that the feelings of a substantial segment of the community are touched so strongly that expressions of principles may become a constitutional and political necessity. In this connection, however, it may be well to keep in mind the warning, "Once the door is opened for enumerating and defining rights in the field of private relations, it may be expected that a number of special interest groups will be pushing for recognition of their particular interests."[12]

C. Two areas appropriate for inclusion in a Declaration of Rights without any question are provisions relating to the civil rights of all persons and those relating to the rights of persons accused of crimes.

1. As to both of these topics the Committee proposes to reorganize and recast the provisions in a more orderly and coherent fashion, even though this requires a departure from forms which have remained unchanged since the Constitution of 1776.

2. The Committee proposes to introduce a plainly articulated equal protection clause in the Declaration of Rights, possibly adopting a form which spells out the guarantees of the Fourteenth Amendment of the United States Constitution against governmental action that discriminates against persons on the basis of race, color, religion or national origin.

D. The Committee proposes to eliminate provisions which no longer serve any real function. The Committee is in a position now only to offer illustrations of provisions which are to be eliminated.

1. Article 24 now seems unnecessary and inappropriate. The same might be said of Articles 41 and 42.

2. Articles 10 through 12 and 28 through 32 appear never to have been put in issue.

3. Articles 36, 37 and 39 require redrafting so severe as to amount to elimination of them in their present form. The Committee's tentative suggestion is that they be replaced by a relatively simple freedom of religion provision in the article or articles devoted to the civil rights of all persons.

E. The Committee proposes to make the Declaration of Rights a full and comprehensive statement of rights reserved by the people against the state government whether or not some of the provisions included duplicate protection given by the United States Constitution.

F. The nature of a Declaration of Rights is such that the problem of conflict with or duplication of provisions in other Articles is presented in an exaggerated form. The Committee would like authority to deal directly with other Committees as such situations develop.

II. Elective Franchise

Two major policy questions in connection with the definition and exercise of the elective franchise are voting age and residence requirements. While the Committee and the Commission may make recommendations, it is arguable that these are matters on which neither Committee nor Commission can claim any peculiar qualifications. As a matter of mechanics the Article can be drafted before these policy decisions are made. The Committee proposes, therefore,

(1) That it proceed to the job of drafting the Article leaving appropriate blanks for age and residence requirements;

(2) That research assistants be engaged to prepare comprehensive memoranda on the topics -- memoranda which ultimately will be submitted to the Convention itself;

(3) That the Committee and the Commission defer any attempt to arrive at a firm recommendation on these matters until the suggested memoranda are completed and a draft Article has been approved by the Commission.

A. With regard to the general structure and function of the Article on Elective Franchise, it appears to be true that some of the worst draftsmanship to be found in state constitutions is found in this Article. The reason seems to be that too frequently an effort is made to provide specific, detailed instructions on the conduct of elections rather than leaving to the Legislature the function of regulating the election process subject to specific restraints on legislative discretion considered to be of constitutional magnitude.

1. The Committee proposes to replace the detailed provisions of Sections 3 and 4 with a general commission to the Legislature of the responsibility to regulate elections, preserve the purity of elections, establish procedures for resolving election contests, etc.

2. As to Sections 6 and 7, the Committee suggests that, assuming these provisions are of constitutional significance, they may more appropriately be included in the Article on Miscellaneous provisions.

B. The root proposal of this Committee is that it undertake to establish in this Article a simple basic pattern for the qualification of voters and the conduct of the elective process; to which pattern other Articles of the Constitution would then conform.

1. If, for example, Section 1 can be employed to establish uniform qualifications for all voters in all elections, then repetitious, and possibly inconsistent, provisions in other Articles can be eliminated. (For example, eligible voters are variously described in the present Constitution as "every person qualified to vote for Delegates", "qualified voters", "voters", "registered voters", "legal voters", etc.)

2. If what is now Section 5 can be recast to specify in reasonably general terms the duty of the Legislature to provide for the conduct and regulation of elections, uniform voter registration, assurance of the secrecy of voting and the purity of elections, then a flexible and adaptable

means of administering the election process is provided and subsequent detailed specifications should be unnecessary. (See, for example, Sections 42, 47 and 49 of Article III.)

3. The Committee proposes that it make this job its first order of business. The Committee will undertake to provide the Commission with a proposed draft Article on the Elective Franchise at the earliest date possible. If such an Article is early adopted, it can, as suggested above, provide a pattern for all other Committees.

Addendum to Part I, The Declaration of Rights

At its meeting of February 12, 1966, the Committee decided to add the following to its First Report:

The Committee proposes to undertake preparation of a Preamble to be added to its draft of The Declaration of Rights. It is the feeling of the Committee that such a Preamble may be an appropriate place and manner of stating the principles and aspirations which will guide and animate the State government created by the Constitution.

FOOTNOTES

1. Grad, Content of State Constitutions: Criteria for Inclusion and Exclusion 28 (Mimeo), State Constitutional Studies Program, Legislative Drafting Research Fund of Columbia University.

2. Ibid.

3. Kauper, The State Constitution: Its Nature and Purpose 18, Michigan Constitutional Convention Research Paper No. 2, Citizens Research Council of Michigan.

4. Smith v. Higinbothom, 187 Md. 115, 128 (1946).

5. "That the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose elections ought to be free and frequent; and every [white male] citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage."

6. Kauper, supra n. 3, at 18-19.

7. Id. at 22.

8. Ibid.

9. See Grad, supra n. 1, at 16-17 for a description of the difficulties encountered in New York when circumstances compelled resort to constitutional amendment for the enactment of a Workmen's Compensation Law.

10. Kauper, supra n. 3, at 22.

11. Id., at 21. The New York Constitution does contain a provision prohibiting any person from discriminating against another on the basis of race, creed or color. The provision, however, contains no penalty or other sanction and has been held to be "non-self-executing" -- unenforceable without supplementary legislation. Kemp v. Rubin, 188 Misc. 310, 69 N.Y.S. 2d 680, aff'd, 273 App. Div. 789, 75 N.Y.S. 2d 768, reversed on other grounds, 298 N.Y. 590, 81 N.E. 2d 325 (1947).

12. Kauper, supra n. 3, at 21.

CONSTITUTIONAL CONVENTION COMMISSION

SECOND REPORT

OF THE

COMMITTEE ON ELECTIVE FRANCHISE AND DECLARATION OF RIGHTS

MAY 16, 1966

RE: ELECTIVE FRANCHISE ARTICLE--
"SUFFRAGE AND ELECTIONS"

> "Suffrage is concerned primarily in defining what persons are sufficiently responsible to be entrusted with the ultimate power of control over the governments of the state and the nation. Unlike the rights to life, liberty, and the pursuit of happiness, the privilege of voting has not been considered, either in England or in the United States as a natural, inherent or inalienable right. Rather, the privilege of voting has been considered as belonging only to the 'responsible' persons of the state. Age, birth, personal wealth, extent of tax contribution to the state, length of residence, birth [sic], race and sex have been some of the criteria employed. What appears in the constitutions as a final definition of 'responsible' persons is generally the final shuffled opinion of the constitutional convention delegates tossed into the multiple currents of the ideas of the time. In general, the pattern which has been commonly used in defining who [are] responsible persons and thus the definition of who has the privilege of voting, is the pattern which lists first the qualifications necessary, and second, the conditions for disqualification."[1]

A. The attached draft represents the Committee's proposals with reference to two matters: eligibility to vote and regulation of the conduct of elections. To that extent the titling of the Article might appropriately be "Suffrage and Elections" rather than the term used in the present Constitution, "Elective Franchise." This would be particularly true if the Commission were to decide, as is here to

1. Suffrage and Elections, Manual on State Constitutional Provisions, prepared for the Constitutional Convention, Territory of Hawaii, 1950, at p. 365.

be suggested, that the provision or provisions relative to time of elections be placed in this Article rather than in the other Articles where such provisions currently are found.

B. Annotation of proposed Article.

Section 1. Eligible Voters. Every citizen of the United States who has attained the age of twenty-one years, and who has been a resident of this State for six months and of the Legislative District in which he offers to vote for three months next preceding an election, and who is registered to vote, shall be eligible to vote at such election for all officers to be elected by the people and upon all questions submitted to a vote of the people. Removal from one Legislative District to another in this State shall not deprive any person of his eligibility to vote in the Legislative District from which such person has removed until three months after his removal.

Comment: As to the two major qualifications for voting, age and period of residence, the Committee reiterates its earlier suggestion that full-scale research studies of these matters be prepared for the Constitutional Convention. Nevertheless, the Committee proposes to recommend that the age qualification remain at 21 years,[2] but that the residence requirement be reduced to six months residence in the State and three months in the Legislative District in which the

2. The Georgia Constitution (1945) places the voting age at 18 as does the Kentucky Constitution (1955 Amend.); the Alaska Constitution (1959) at 19; and the Hawaii Constitution (1959) at 20. All other state constitutions, including several adopted in the last decade, retain 21 as the voting age.

prospective voter offers to vote. The reduced residence period conforms to an apparent movement in this direction as evidenced by some of the most recently adopted state constitutions.[3] Implicit in this movement is recognition that in the presence of elaborate and sophisticated communication systems it takes less time for a resident to acquaint himself with candidates and issues than it did a century ago.[4]

The term "Legislative District" is substituted for "Legislative District of Baltimore City, or of the County . . .," as the term describing the election district in which each person is to qualify for voting in state and national elections. The change appears to be a natural and necessary one in view of pending reapportionment of the State. It is intended that "Legislative District" shall mean, as it does in the present Constitution, that district from which a delegate is elected to serve in the Maryland House of Delegates.

The final provisions of section 1, protecting the voting eligibility of one moving from one Legislative District to another within the State is essentially the same as that found in Article 1, section 1 of the present Constitution.

Section 2. Retention of Residence; Absentee Voting.

For purposes of voting, no person shall be deemed to have

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3. Connecticut (1965)--six months in the town in which he offers to vote (the only period specified); Michigan (1964)--six months in the State and meet requirements of local residence; New Jersey (1947)--six months in the State and 60 days in county. Hawaii and Alaska (1959) both retain the one-year residence requirement, as does Missour (1945). Six months residence in the State is also specified in Idaho, Indiana, Iowa, Kansas, Maine, Minnesota, Nebraska, Nevada, New Hampshi and Oregon.

4. See Model State Constitution, Commentary, pp. 39-40.

lost his residence solely by reason of his absence from this State while employed in the service of the United States or of this State, nor while a student in any school. The General Assembly shall provide for voting by any eligible voter who is absent from his Legislative District at the time of any election or who is unable to attend the polls by reason of physical disability or the tenets of his religion.

Comment: The Committee believes the purpose and operation of section 2 is reasonably self-evident. If a resident of this State is required to be absent from this State while in the service, military or otherwise, of the United States, or while in the service of this State, or while a student; and if such person elects to exercise his franchise in Maryland while so engaged, he should have the option to do so.

The absentee voting provision in section 2 is essentially the same as that found in Article 1, section 1A of the present Constitution. The Committee sees no occasion to suggest a change. The number of persons who may be required to be absent from their home districts on election days is constantly growing. There seems little reason why methods should not be provided for them to vote. The General Assembly has ample power to protect against any possible abuses of absentee voting.

Section 3. Persons Eligible to Vote in Presidential Elections. Any person who has been a resident of this State less than six months next preceding an election,

but who is otherwise eligible to vote under this Article, may vote for presidential electors in such an election.

Comment: This section is new to the Maryland Constitution but has been included in several other state constitutions in recent years.[5] The reasoning supporting it, which the Committee adopts, is that citizens moving here from other states can be presumed to be as well informed on national candidates and national issues as those who have resided in Maryland during the same period.

It should be noted that the only qualification affected is that referring to residence in the State. The three-month residence in the appropriate Legislative District remains a requirement. It appears that all states adopting comparable provisions have seen fit to adopt some minimum period of residence for voting even in national elections.[6] If, as appears to be true, the danger of "colonization" is that against which residence requirements have always and principally been directed, it would seem that some protection is still needed against efforts to "import" voters into states registering a large number of electoral votes in national elections.

Section 4. Residents of Federal Government Reservations. No person shall be deemed ineligible to vote in national or State elections solely by reason of

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5. California (1958 Amend.); Ohio (1957 Amend.); Oregon (1960 Amend.).

6. California, Art. II, § 1: "at least 54 days but less than one year"; Ohio, Art. V, § 1: "resident of the state, county, township or ward . . . such time as may be provided by law" (county, township or ward residence periods presumably set by law at less than one year).

the fact that he resides on land over which the United States Government exercises exclusive jurisdiction.

Comment: This section also represents an innovation in the Maryland Constitution. Federal reservations or enclaves located throughout the State are the residence of many citizens who are present in the State for extended periods of time; who are required to pay state income tax, sales and use taxes, the fuel tax, and motor vehicle registration and operator's license fees;[7] and who claim no other residence in the United States. The Maryland Court of Appeals held in Royer v. Bd. of Elec. Sups.[8] that such persons are not residents within the meaning of Article 1, section 1 of the present Constitution.

The Committee proposes section 4 on the ground that there is no sufficient reason for denying such persons the right to vote in state and national elections. Large numbers of these persons (doctors, teachers, administrators, scientists, technicians, etc.) are no more transient than many other segments of the population; nor are military or civilian personnel living on a government reservation more transient than their colleagues who choose to live off such a government base. Since this Article by its terms applies only to state and national elections, the common argument that such government-based citizens are unfamiliar with or have only a narrow interest in local matters is not really applicable.

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7. Royer v. Bd. of Elec. Sups., 231 Md. 561 (1963).

8. Ibid.

Section 5. Disqualification. No person convicted of a crime punishable by imprisonment for a period of more than one year shall thereafter be eligible to vote in any election unless he is pardoned by the Governor; nor shall any person be eligible to vote during such time as he is adjudicated mentally incompetent.

Comment: After considerable discussion and weighing of alternatives the Committee proposes the above disqualification provision. Its principal virtue is that it introduces a little more definiteness on the topic of disqualification for conviction of a crime. The proposed provision is somewhat stricter than the present provision to the extent that it eliminates the qualification, "No person above the age of twenty-one years . . . ." There is a rough correspondence between the proposed provision and the Federal Criminal Code in that the latter defines felony in terms of those crimes punishable by imprisonment for more than one year.[9]

There appears to be a disposition in some recent state constitutions to leave the question of disfranchisement for conviction of a crime to the legislature.[10] This Committee, however, believes that eligibility to vote is of such significance that constitutional protection against arbitrary or capricious disfranchisement is appropriate.

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9. 18 U.S.C.A. § 1.

10. New Jersey (1947), Art. II, § 7:

"The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes

[continued on p. 8]

The Committee considered at length alternatives which would avoid automatic disqualification upon conviction of a crime. Chief among the alternatives considered was one in which loss of franchise would be made a matter of sentence by the judge before whom the criminal cause is tried. The difficulty of such an approach is that encountered in connection with convictions in federal courts or in the court of other states. Such courts would not, and indeed probably could not, make disqualification in Maryland a part of a proper sentence.

The proposed provision on disqualification for mental incompetence is substantially the same as that in the present Constitution. The Committee deemed it advisable to continue the safeguard which makes disqualification turn upon an adjudication of incompetence.

Section 6. Elections. Except as otherwise provided in this Constitution and in the Constitution and laws of the United States, the General Assembly shall by appropriate enactment determine Legislative Districts, establish a system of permanent registration of voters, provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the

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[n.10 continued from p. 7]

as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right."

Michigan (1964), Art. II, § 2:

"The Legislature may by law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution."

administration of elections, insure secrecy of voting and protect the integrity of the election process.

Comment: The Committee proposes that section 6 be substituted for the detailed provisions found in sections 3, 4 and 5 of the present Constitution. The Committee understands and intends that proposed section 6 shall act as a broad commission to the General Assembly of the duty and responsibility of providing appropriate machinery for elections and necessary safeguards for the election process. The Committee believes that the state legislature is in the best position to provide for comprehensive regulation of the election process and that legislation is more flexible and adaptable for such a purpose than a constitutional provision would be.

If this approach is acceptable to the Commission, it would mean that a number of miscellaneous provisions found throughout the present Constitution would be rendered unnecessary. See, for example:

Article 3, sections 42, 47, 49 and 50

Article 4, sections 11 and 12

Article 5, sections 2 and 8

Article 15, section 4

Article 17, section 8.

Section 7. Terms of Office of State and County Officers; Date of Elections. Except as otherwise provided in this Constitution, all elected State and County officers shall hold office for terms of four years, and until their successors shall qualify. Elections for

State and County officers shall be held on the Tuesday next after the first Monday in November in the year nineteen hundred and seventy, and on the same day every fourth year thereafter.

Comment: As suggested earlier, it may be advisable to convert what is presently Article 1 into a full-scale Suffrage and Elections Article. It is believed that the addition of section 7, taken together with section 6, will accomplish this purpose in a reasonably economical manner. Proposed section 7 includes substantially all of what remains in Article 17, the so-called "Fewer Elections Amendment." In addition the two sections in combination would cover all or substantially all of the matters currently covered in the following sections:

Article 2, sections 2 and 3 (and some of the details of section 4)

Article 3, sections 7, 42, 47, 49 and 50

Article 4, sections 11 and 12

Article 5, sections 2 and 8

Article 7, sections 1 and 2

Article 15, sections 4, 7 and 9

Article 17, entire Article.

Section 8. Elections in Political Subdivisions. *Nothing contained in this Article shall be deemed to deny to political subdivisions the power to prescribe additional qualifications for voters offering to vote in local elections.*

Comment: It has been settled since shortly after the adoption of the Maryland Constitution of 1867 that the provisions of Article 1 of that Constitution do not apply to elections held by political subdivisions; or to any elections not specifically referred to or required by the Constitution itself. The strongest statement of that proposition is found in Hanna v. Young.[11]

> "It is only at elections which the Constitution itself requires to be held, or which the Legislature under the mandate of the Constitution makes provision for, that persons having the qualifications set forth in said section 1, Article 1, are by the Constitution of the State declared to be qualified electors. Nowhere in the Constitution are the governments of municipalities in this State, or their officials, either clothed with power or designated as any part of our State government, but their very creation, together with all the powers and attributes which attach to their management, are lodged by the Constitution with the legislative department of our State government, save in respects the city of Baltimore."

The Committee considered whether some change should be introduced with the purpose of limiting additional qualifications which political subdivisions could impose upon those offering to vote in local elections. The conclusion is that the disadvantages of attempting to include such provisions, at least in this Article, are prohibitive.

1. In the reapportioned State, Legislative Districts probably are not going to correspond with county, town or city lines. This means that residence for state and national elections and residence for local elections would have to be separately defined. The increased complexity of drafting would make the provisions difficult for members of the Convention or of the public to comprehend.

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11. 84 Md. 179, 183 (1896).

2. Any effort to limit the power of political subdivisions to establish qualifications which they consider appropriate and important to the subdivision are likely to be vigorously resisted and are also likely to increase resistance to sections 3 and 4 above.

3. Unless the Convention is to act to rescind charters granted under the present Constitution, such limitations will apply to some subdivisions and not to others.

If the Commission believes that such restrictions should be imposed by the constitution on the subdivisions (perhaps, for example, with reference to property qualifications which prevail in a few localities), the Committee suggests that this might be done in a simpler and more orderly manner by imposition of limitations on the legislature in the exercise of its charter power under which is Article 11 A of the present Constitution. Such a provision, presumably, would take the form of a statement that no charters shall be granted (or continued) which limit eligibility to vote in local elections in unacceptable ways. The problem of what to do about existing charters would, of course, not be solved by such a treatment. The Committee recommendation is that the matter be left as it is.

Finally, it should be noted that the Committee has eliminated from this Article the provisions presently found in sections 6 and 7 of the Maryland Constitution. These sections concern all state officers, not merely the elected ones, and the matters involved are related only in the most indirect way to elective franchise and elections. The Committee believes that they can be dealt with more appropriately in some other part of the constitution.

Respectfully submitted,
Committee on Elective Franchise and Declaration of Rights

ARTICLE ON SUFFRAGE AND ELECTIONS

Section 1. Eligible Voters. Every citizen of the United States who has attained the age of twenty-one years, and who has been a resident of this State for six months and of the Legislative District in which he offers to vote for three months next preceding an election, and who is registered to vote, shall be eligible to vote at such election for all officers to be elected by the people and upon all questions submitted to a vote of the people. Removal from one Legislative District to another in this State shall not deprive any person of his eligibility to vote in the Legislative District from which such person has removed until three months after his removal.

Section 2. Retention of Residence; Absentee Voting. For purposes of voting, no person shall be deemed to have lost his residence solely by reason of his absence from this State while employed in the service of the United States or of this State, nor while a student in any school. The General Assembly shall provide for voting by any eligible voter who is absent from his Legislative District at the time of any election or who is unable to attend the polls by reason of physical disability or the tenets of his religion.

Section 3. Persons Eligible to Vote in Presidential Elections. Any person who has been a resident of this State less than six months next preceding an election, but who is otherwise eligible to vote under this Article, may vote for presidential electors in such an election.

Section 4. Residents of Federal Government Reservations. No person shall be deemed ineligible to vote in national or State elections solely by reason of the fact that he resides on land over which the United States Government exercises exclusive jurisdiction.

Section 5. Disqualification. No person convicted of a crime punishable by imprisonment for a period of more than one year shall thereafter be eligible to vote in any election unless he is pardoned by the Governor; nor shall any person be eligible to vote during such time as he is adjudicated mentally incompetent.

Section 6. Elections. Except as otherwise provided in this Constitution and in the Constitution and laws of the United States, the General Assembly shall by appropriate enactment determine Legislative Districts, establish a system of permanent registration of voters, provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections, insure secrecy of voting and protect the integrity of the election process.

Section 7. Terms of Office of State and County Officers; Date of Elections. Except as otherwise provided in this Constitution, all elected State and County officers shall hold office for terms of four years, and until their successors shall qualify. Elections for State and County officers shall be held on the Tuesday next after the first Monday in November in the year nineteen hundred and seventy, and on the same day every fourth year thereafter.

Section 8. Elections in Political Subdivisions. Nothing contained in this Article shall be deemed to deny to political subdivisions the power to prescribe additional qualifications for voters offering to vote in local elections.

CONSTITUTIONAL CONVENTION COMMISSION

THIRD REPORT

OF THE

COMMITTEE ON ELECTIVE FRANCHISE AND DECLARATION OF RIGHTS

June 20, 1966

RE: ELECTIVE FRANCHISE ARTICLE--
"SUFFRAGE AND ELECTIONS"

> "Suffrage is concerned primarily in defining what persons are sufficiently responsible to be entrusted with the ultimate power of control over the governments of the state and the nation. Unlike the rights to life, liberty, and the pursuit of happiness, the privilege of voting has not been considered, either in England or in the United States as a natural, inherent or inalienable right. Rather, the privilege of voting has been considered as belonging only to the 'responsible' persons of the state. Age, birth, personal wealth, extent of tax contribution to the state, length of residence, birth [sic], race and sex have been some of the criteria employed. What appears in the constitutions as a final definition of 'responsible' persons is generally the final shuffled opinion of the constitutional convention delegates tossed into the multiple currents of the ideas of the time. In general, the pattern which has been commonly used in defining who [are] responsible persons and thus the definition of who has the privilege of voting, is the pattern which lists first the qualifications necessary, and second, the conditions for disqualification."[1]

A. The attached draft represents the Committee's proposals with reference to two matters: eligibility to vote and regulation of the conduct of elections. To that extent the titling of the Article

1. "Suffrage and Elections," Manual on State Constitutional Provisions, prepared for the Constitutional Convention, Territory of Hawaii, 1950, at p. 365.

might appropriately be "Suffrage and Elections" rather than the term used in the present constitution, "Elective Franchise." This would be particularly true if the Commission were to decide, as is here to be suggested, that the provision or provisions relative to time of elections be placed in this Article rather than in the other Articles where such provisions currently are found.

B. Annotation of proposed Article.

Section 1. Eligible Voters. Every citizen of the United States who has attained the age of twenty-one years, and who has been a resident of this State for six months and of the Legislative District in which he offers to vote for three months next preceding an election, and who is registered to vote, shall be eligible to vote at such election for all officers to be elected by the people and upon all questions submitted to a vote of the people. Removal from one Legislative District to another in this State shall not deprive any person of his eligibility to vote in the Legislative District from which such person has removed until three months after his removal.

Comment: As to the two major qualifications for voting, age and period of residence, the Committee reiterates its earlier suggestion that full scale research studies of these matters be prepared for the Constitutional Convention. Nevertheless, the Committee proposes to recommend that the age qualification remain at 21 years.[2]

2. The Georgia Constitution (1945) places the voting age at 18 as does the Kentucky Constitution (1955 Amend.); the Alaska Constitution (1959) at 19; and the Hawaii Constitution (1959) at 20. All other state constitutions, including several adopted in the last decade, retain 21 as the voting age.

but that the residence requirement be reduced to six months residence in the State and three months in the Legislative District in which the prospective voter offers to vote. The reduced residence period conforms to an apparent movement in this direction as evidenced by some of the most recently adopted state constitutions.[3] Implicit in this movement is recognition that in the presence of elaborate and sophisticated communication systems it takes less time for a resident to acquaint himself with candidates and issues than it did a century ago.[4]

The term "Legislative District" is substituted for "Legislative District of Baltimore City, or of the County . . .," as the term describing the election district in which each person is to qualify for voting in state and national elections. The change appears to be a natural and necessary one in view of pending reapportionment of the State. It is intended that "Legislative District" shall mean, as it does in the present Constitution, that district from which a delegate is elected to serve in the Maryland House of Delegates.

The final provision of Section 1, protecting the voting eligibility of one moving from one Legislative District to another within the State, is essentially the same as that found in Article 1, Section 1 of the present Constitution.

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3. Connecticut (1965)--six months in the town in which he offers to vote (the only period specified); Michigan (1964)--six months in the state and meet requirements of local residence; New Jersey (1947)--six months in the state and 60 days in county. Hawaii and Alaska (1959) both retain the one-year residence requirement, as does Missouri (1945). Six months residence in the state is also specified in Idaho, Indiana, Iowa, Kansas, Maine, Minnesota, Nebraska, Nevada, New Hampshire and Oregon.

4. See Model State Constitution, Commentary, pp.39-40.

Section 2. Persons Eligible to Vote in Presidential Elections.

Any person who has been a resident of this State less than six months next preceding an election, but who is otherwise eligible to vote under this Article, may vote for presidential electors in such an election.

Comment: This section is new to the Maryland Constitution but has been included in several other state constitutions in recent years.[5] The reasoning supporting it, which the Committee adopts, is that citizens moving here from other states can be presumed to be as well informed on national candidates and national issues as those who have resided in Maryland during the same period.

It should be noted that the only qualification affected is that referring to residence in the State. The three-month residence in the appropriate Legislative District remains a requirement. It appears that all states adopting comparable provisions have seen fit to adopt some minimum period of residence for voting even in national elections.[6] If, as appears to be true, the danger of "colonization" is that against which residence requirements have always and principally been directed, it would seem that some protection is still needed against efforts to "import" voters into states registering a large number of electoral votes in national elections.

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5. California (1958 Amend.); Ohio (1957 Amend.); Oregon (1960 Amend.).

6. California, Article II, Section 1: "at least 54 days but less than one year"; Ohio, Article V, Section 1: "resident of the state, county, township or ward . . . such time as may be provided by law," (county, township or ward residence periods presumably set by law at less than one year).

Section 3. Residents of Federal Government Reservations.

No person shall be deemed ineligible to vote in national or State elections solely by reason of the fact that he resides on land over which the United States Government exercises exclusive jurisdiction.

Comment: This section also represents an innovation in the Maryland Constitution. Federal reservations or enclaves located throughout the State are the residence of many citizens who are present in the State for extended periods of time; who are required to pay state income tax, sales and use taxes, the fuel tax, and motor vehicle registration and operator's license fees;[7] and who claim no other residence in the United States. The Maryland Court of Appeals held in Royer v. Bd. of Elec. Sups.[8] that such persons are not residents within the meaning of Article 1, Section 1 of the present Constitution.

The Committee proposes Section 3 on the ground that there is no sufficient reason for denying such persons the right to vote in state and national elections. Large numbers of these persons (doctors, teachers, administrators, scientists, technicians, etc.) are no more transient than many other segments of the population; nor are military or civilian personnel living on a government reservation more transient than their colleagues who choose to live off such a government base. Since this Article by its terms applies only to state and national elections, the common argument that such government-based citizens are unfamiliar with or have only a narrow interest in local matters is not really applicable.

7. Royer v. Bd. of Elec. Sups., 231 Md. 561 (1963).

8. Ibid.

At the Commission meeting of May 16, 1966, a question was raised whether directing this section to reservations over which the United States Government exercises exclusive jurisdiction might not be too narrow, leaving some residents of federal reservations still without franchise in state and national elections. A 1959 opinion of the Attorney General (prepared by James O'C. Gentry, Esq.) appears to put such doubts to rest.[9] That opinion confirms earlier opinions of the Attorney General, supported by decisions of the Court of Appeals, that only residents of enclaves over which the United States Government exercises exclusive jurisdiction have been regarded as disqualified to vote.

Section 4. Disqualification. No person shall be eligible to vote during such time as he is adjudicated mentally incompetent; and the General Assembly may by law exclude from voting those persons convicted of serious crimes.

Comment: In accordance with the wishes of the Commission expressed at the meeting of May 16, 1966, the section on disqualification has been redrafted. The suggested formulation offered by the Commission has been altered slightly. The change is designed solely to make disqualification for mental incompetence automatic while reserving power to disqualify for conviction of a serious crime to the General Assembly.

In this connection it seems advisable to inform the Commission about a very recent California decision holding that one convicted (on guilty plea) of violation of the Selective Service Act (as a conscientious objector) is not guilty of an "infamous crime" within

9. 44 Ops. Att'y. Gen. 164 (1959), citing Lowe v. Lowe, 150 Md. 592 (1926).

the meaning of the California Constitution.[10] The full significance of the decision is seen in the determination of the California Supreme Court that too broad a reading of the phrase "infamous crime" in the state constitution might result in a violation of the Fourteenth Amendment to the United States Constitution. For present purposes, this suggests that if the Maryland General Assembly, acting under this proposed Section 4, gave too broad a reading to "serious crime," such enactment might be a violation of this provision of the Maryland Constitution; and in turn, if the Maryland Court of Appeals tolerated too broad a reading of the section by the General Assembly, that combination of events might be a violation of the Fourteenth Amendment.

As noted in the earlier Committee report, the proposed Section 4 is similar to that included in the recent Constitutions of New Jersey and Michigan.[11]

Section 5. Elections. The General Assembly shall by law determine Legislative Districts, define residence, establish a system of permanent registration of voters, provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting and protect the integrity of the election process.

Comment: The Committee proposes that Section 5 be substituted for the detailed provisions found in Sections 3, 4 and 5 of the

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10. Otsuak v. Hite, Calif. Sup. Ct., 5/24/66, 34 U.S. L. Week 2666 (6/7/66).
11. New Jersey (1947), Article II, Section 7:

"The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right." [continued on p.8]

present Constitution. The Committee understands and intends that proposed Section 5 shall act as a broad commission to the General Assembly of the duty and responsibility of providing appropriate machinery for elections and necessary safeguards for the election process. In accordance with the recommendations of the Commission at its meeting of May 16, 1966, the Committee has redrafted Section 5 to incorporate the matters formerly placed in what was Section 2. By this redraft the power and the duty to define residence and provide for absentee voting has also been committed to the General Assembly.

Under this approach, a number of miscellaneous provisions found throughout the present Constitution appear to be rendered unnecessary. See, for example,

Article 3, Sections 42, 47, 49 and 50
Article 4, Sections 11 and 12
Article 5, Sections 2 and 8
Article 15, Section 4
Article 17, Section 8

Section 6. Date of Elections. Elections for State officers shall be held on the Tuesday next after the first Monday in November in the year Nineteen Hundred and Seventy, and on the same day every even year thereafter.

Comment: As suggested earlier, it may be advisable to convert what is presently Article 1 into a full-scale Suffrage and Elections Article. It is believed that the addition of Section 6, taken together with Section 5, will accomplish this purpose in a reasonably economical manner. The section has been redrafted to conform to the directives of the Commission at its meeting of May 16, 1966. It

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[n.11 continued from p.7]
Michigan (1964), Article II, Section 2:

"The Legislature may by law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution.

should be noted in this connection that the essence of the present Article 17, incorporated into the Maryland Constitution as the so-called "Fewer Elections Amendment" of 1922, has for all practical purposes been eliminated. Sections 5 and 6 as currently proposed should eliminate the need for the following sections:

Article 2, Section 3 (and some of the details of Section 4).
Article 3, Sections 42, 47, 49 and 50.
Article 4, Sections 11 and 12.
Article 5, Sections 2 and 8.
Article 15, Sections 4 and 7.
Article 17, entire Article.

However, under the revised draft, the following sections or some form thereof, providing time of election and terms of office for various elected officials, would have to be continued:

Article 2, Section 2.
Article 3, Section 7.
Article 5, Section 1.
Article 7, Sections 1 and 2.
Article 15, Section 9.

Section 7. Elections in Political Subdivisions.

Nothing contained in this Article shall be deemed to deny to political subdivisions the power to prescribe additional qualifications for voters offering to vote in local elections.

Comment: It has been settled since shortly after the adoption of the Maryland Constitution of 1867 that the provisions of Article 1 of that Constitution do not apply to elections held by political subdivisions; or to any elections not specifically referred to or required by the Constitution itself. The strongest statement of that proposition is found in Hanna v. Young.[12]

12. 84 Md. 179, 183 (1896).

"It is only at elections which the Constitution itself requires to be held, or which the Legislature under the mandate of the Constitution makes provision for, that persons having the qualifications set forth in said section 1, Article 1, are by the Constitution of the State declared to be qualified electors. Nowhere in the Constitution are the governments of municipalities in this State, or their officials, either clothed with power or designated as any part of our State government, but their very creation, together with all the powers and attributes which attach to their management, are lodged by the Constitution with the legislative department of our State government, save in some respects the city of Baltimore."

The Committee considered whether some change should be introduced with the purpose of limiting additional qualifications which political subdivisions could impose upon those offering to vote in local elections. The conclusion is that the disadvantages of attempting to include such provisions, at least in this Article, are prohibitive.

1. In the reapportioned state, Legislative Districts probably are not going to correspond with county, town or city lines. This means that residence for state and national elections and residence for local elections would have to be separately defined. The increased complexity of drafting would make the provisions difficult for members of the Convention or of the public to comprehend.

2. Any effort to limit the power of political subdivisions to establish qualifications which they consider appropriate and important to the subdivision are likely to be vigorously resisted and are also likely to increase resistance to Sections 3 and 4 above.

3. Unless the Convention is to act to rescind charters granted under the present Constitution, such limitations will apply to some subdivisions and not to others.

If the Commission believes that such restrictions should be imposed by the constitution on the subdivisions (perhaps, for example, with reference to property qualifications which prevail in a few localities), the Committee suggests that this might be done in a simpler and more orderly manner by imposition of limitations on the legislature in the exercise of its charter power under what is Article 11A of the present Constitution. Such a provision, presumably, would take the form of a statement that no charters shall be granted (or continued) which limit eligibility to vote in local elections in unacceptable ways. The problem of what to do about existing charters would, of course, not be solved by such a treatment. The committee recommendation is that the matter be left as it is.

Finally, it should be noted that the Committee has eliminated from this Article the provisions presently found in Sections 6 and 7 of the Maryland Constitution. These sections concern all state officers, not merely the elected ones, and the matters involved are related only in the most indirect way to elective franchise and elections. The Committee believes they can be dealt with more appropriately in some other part of the constitution.

Respectfully submitted,
Committee on Elective Franchise and
Declaration of Rights

ARTICLE ON SUFFRAGE AND ELECTIONS

Section 1. Eligible Voters. Every citizen of the United States who has attained the age of twenty-one years, and who has been a resident of this State for six months and of the Legislative District in which he offers to vote for three months next preceding an election, and who is registered to vote, shall be eligible to vote at such election for all officers to be elected by the people and upon all questions submitted to a vote of the people. Removal from one Legislative District to another in this State shall not deprive any person of his eligibility to vote in the Legislative District from which such person has removed until three months after his removal.

Section 2. Persons Eligible to Vote in Presidential Elections. Any person who has been a resident of this State less than six months next preceding an election, but who is otherwise eligible to vote under this Article, may vote for presidential electors in such an election.

Section 3. Residents of Federal Government Reservations. No person shall be deemed ineligible to vote in national or State elections solely by reason of the fact that he resides on land over which the United States Government exercises exclusive jurisdiction.

Section 4. Disqualification. No person shall be eligible to vote during such time as he is adjudicated mentally incompetent; and the General Assembly may by law exclude from voting those persons convicted of serious crimes.

Section 5. Elections. The General Assembly shall by law determine Legislative Districts, define residence, establish a system of permanent registration of voters, provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting and protect the integrity of the election process.

Section 6. Date of Elections. Elections for State officers shall be held on the Tuesday next after the first Monday in November in the year Nineteen Hundred and Seventy, and on the same day every even year thereafter.

Section 7. Elections in Political Subdivisions. Nothing contained in this Article shall be deemed to deny to political subdivisions the power to prescribe additional qualifications for voters offering to vote in local elections.

C O N S T I T U T I O N A L C O N V E N T I O N C O M M I S S I O N

FOURTH REPORT

OF THE

COMMITTEE ON ELECTIVE FRANCHISE AND DECLARATION OF RIGHTS

July 17-18, 1966

RE: ELECTIVE FRANCHISE ARTICLE--
"SUFFRAGE AND ELECTIONS"

I. The following changes have been made in the Article on Suffrage and Elections in an effort to meet the wishes of the Commission expressed at the meeting of June 20, 1966.

Section 4. Disqualification. No person shall be eligible to vote during such times as he is mentally incompetent; and the General Assembly may by law exclude from voting those persons convicted of serious crimes. Any person excluded from voting for conviction of a crime shall again be eligible to vote if pardoned by the Governor.

Comment: The word "adjudicated" has been eliminated from the sentence dealing with disqualification for mental incompetence, and a sentence has been added providing for restoration of voting eligibility for one disqualified for conviction of a crime when such person has been pardoned by the Governor.

Section 5. Elections. The General Assembly shall by law determine Legislative Districts, define residence, establish a uniform system of permanent registration of voters, provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting and protect the integrity of the election process.

Comment: The word "uniform" has been inserted modifying "system of permanent registration of voters".

Section 7. Elections in Political Subdivisions. Nothing contained in this Article shall be deemed to deny to political subdivisions the power to prescribe other or additional qualifications for voters offering to vote in local elections and to establish local procedures for voter registration, nomination of candidates, and administration and regulation of elections: Provided only, that in all such instances the voting age shall not be reduced below 21 years, and the secrecy of the ballot and integrity of the election process shall be preserved.

Comment: The above quoted Section 7 is offered as an effort to conform this section to the wishes of the Commission expressed in a series of votes taken at the meeting of June 20, 1966.

The Committee feels prompted to add the following commentary: At the public hearings held on this article the Committee heard many strong expressions in favor of preserving local autonomy over local elections. The Committee believed that these strong feelings about the desirability of local control over local elections would be even more pronounced if Section 3 ("Residents of Federal Government Reservations") met with the Commission's favor. For that reason Section 7 was included as an effort to reassure those concerned with local election processes that this Constitution did not represent an effort to introduce State control over local elections. This may, indeed, be an excess of caution. The Maryland Court of Appeals has consistently held with regard to the Constitution of 1867 that this Article is only intended to deal with and regulate statewide elections or elections specifically provided for in the Constitution itself. For that reason the terms and restrictions expressed in the State Constitution have been held inapplicable to local elections. It seems probable almost to the point of certainty, that absent a clear expression to the contrary, the proposed constitution would be read and construed the same way. That being the case, and in view of the difficulty encountered in producing a generally acceptable draft of such a section, the Committee suggests the Commission consider eliminating Section 7 altogether.

RE: REFERENDUM

I. General

A. In the present Maryland Constitution the provisions on the Referendum are set out in a separate article, Article XVI. As an alternative to this, the Committee notes that in some recent state constitutions, these provisions are included in the Article on Suffrage and Elections. Since the proposed draft heretofore submitted by this Committee to the Commission does incorporate both of these topics in a single article, it may well be consistent with this plan to include referendum provisions in this article as well.

B. The Committee considered whether the proposed article should include as well provisions making initiative and recall a part of the Maryland election and legislative schemes. The decision of the Committee was to recommend against any such provisions.

1. Initiative: In the Committee's opinion, the initiative is unnecessary except in the most extraordinary circumstances. As Senator Della pointed out to the Committee, it is difficult to visualize any piece of proposed legislation, supported by a substantial number of eligible voters, that would not command the respectful attention of at least one member of the General Assembly. Any proposed bill that could attract the petition signatures of 3% or 5% (or even 1%) of the eligible voters, could almost certainly find one member of the General Assembly to introduce it.

The Committee considered as well the hybrid initiative-referendum idea attached as an appendix to the Model State Constitution. It is generally acknowledged that this tentative proposal was designed as a technique for avoiding problems presumably created by malapportionment in state legislatures. As such there is no apparent present need for it. Standing alone, it is a constitutional provision which diminishes the dignity of the state legislature and just for that reason should be avoided in the absence of some strong and obvious need.

2. Recall: At the request of Senator Gude the Committee held a hearing on the possible inclusion in the Constitution providing for the recall of elected officers.

Senator Gude made available to the Committee his Senate Bill No. 119, a proposed Constitutional Amendment providing for such recall, which was introduced during the 1966 Session of the General Assembly. Senator Gude's bill would have added a section to Article 16 of nine subsections running to 128 lines. The proposed amendment would have provided for a recall system, specified in great detail.

After hearing Senator Gude and reviewing the proposal, the Committee decided to recommend that no recall provision be included in the Constitution; and that in the event the Commission should decide that such a provision is needed, the most that should be included is a general directive to the General Assembly, accompanied by minimal qualifications in the manner of Article II, Section 8 of the Michigan Constitution.

> "Sec. 8. Recall. Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record upon petition of electors equal in number to 25 per cent of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial questions."

II. The Proposed Article.

Section 1. Referendum. The people may reject acts of the General Assembly by Referendum.

Comment: This section is designed as a simple statement of the principle of the referendum. It is probably not a truly functional part of the Article, and if the Commission decides that these provisions should be incorporated into the Article on Suffrage and Elections, this provision probably can and should be eliminated entirely.

Section 2. Effect of Referendum Petition. If before the date on which any law enacted by the General Assembly is to take effect a petition shall have

been filed with the Secretary of State to refer to a vote of the people such law, or any part thereof, then such law shall not take effect until thirty days after its approval by a majority of those voting on the question at the next election of State officers; provided that any law designated as an emergency law shall take effect notwithstanding a referendum petition, but shall stand repealed thirty days after rejection by a majority of those voting on the question.

Comment: Section 2 of Article XVI of the present Constitution is an enormously complicated provision, thick with cross-references and cautionary provision and containing a couple of substantive provisions not appropriate to this Article in the first place. The design of the present draft is to simplify the draftsmanship, to eliminate those elements belonging more properly to other articles and to break a long blunderbuss provision into shorter, more readily comprehended sections.

(a) First it should be pointed out that this proposed section eliminates the provision presently found in Article XVI Section 2 specifying the time when laws enacted by the General Assembly shall take effect. It seems to the Committee that this is the wrong place for such a constitutional provision. The proposed section 2 proceeds on the assumption that the effective date of acts of the General Assembly is otherwise determined and keys its working provisions to such date or dates.

(b) Similarly, it is suggested that the definition of an "emergency law" and the statement of limitations on the enactment of "emergency laws" belongs elsewhere, probably in the Article on the General Assembly.

(c) In essence, the section is designed to state in the simplest terms the effect of a referendum petition.

Section 3. Number of Petitioners Required.

(a) A petition shall be sufficient to refer a [Public General] law, or any part thereof, to a vote of the people if signed by a number of eligible voters equal to three per cent of the total number of votes cast for Governor in the last gubernatorial election.

[(b) Any Public Local Law for Baltimore City or for any one County shall be referred by the Secretary of State to the people of Baltimore City or of such County upon petition of a number of eligible voters residing in Baltimore City or such County, as the case may be, equal to ten per cent of the total number of votes cast therein for Governor in the last gubernatorial election.]

(c) If more than one-half but less than the full number of signatures required for any referendum petition be filed with the Secretary of State before the date on which the law against which such petition is directed if to take effect, the effective date for such law and the time for filing the remainder of the required signatures shall be extended thirty days.

Comment: If, as has been suggested, the Public Local Law is to be dispensed within the new Constitution, then the bracketed material in section 3 can be eliminated altogether. In that event there will be no need for subsections and what is now (c) can be incorporated into a single section with (a).

(a) The Committee considered raising to 5% the required percentage of voters on a referendum petition. A majority of the Committee believed however, that the 3% requirement was sufficient to prevent frivolous or obstructionist petitions and that 5% might as a practical matter be so burdensome as to amount to eliminating the right of referendum indirectly.

(b) The Committee believes that the requirement that no more than one-half of the signers of a referendum petition be residents of Baltimore City or of any one County is an unnecessary precaution in present circumstances. The fact that any petition will have to attract in excess of 20,000 signatures at the present time should insure that petitions designed to advance narrow local interests will be almost impossible. Moreover, the Committee points out that the petition is only a first, qualifying step. The final decision must in all cases be made by all the voters of the State.

(c) The time extension provision now in subsection 3(c) is substantially

unchanged.

Section 4. Restrictions. No law making any appropriation for maintaining the State Government, or for aiding or maintaining any public institution shall be subject to rejection or repeal by referendum.

Comment: Section 4 contains provisions restricting employment of the referendum presently found in Section 2 of Article XVI. They have been separated and placed in a separate section solely for purposes of ease of reading and comprehension.

Substantively, the proposed section eliminates the distinction presently made between "appropriations" exceeding and those not exceeding the next preceding appropriation for the same purpose. In the opinion of the Committee the fundamental purpose of this restriction on referendum is preservation of legislative power to make necessary provisions for maintaining the state government and its institutions. The present provision appears, at least indirectly, to be an effort to employ a constitutional provision to restrict the legislature in the exercise of its judgment in matters of prime legislative concern.

Section 5. Administration and Regulation of Referenda. The General Assembly shall prescribe the form and the procedure for authentication of petitions for referendum, and shall provide for publication of the texts of laws petitioned to referendum, for the form of ballot to be used and for the administration and regulation of voting on such questions.

Comment: Consistent with the approach taken in the Article on Suffrage and Elections, the Committee proposes that the specification of details and the general administration of the referendum process be left to the General Assembly.

CONSTITUTIONAL CONVENTION COMMISSION

FIFTH REPORT

OF THE

COMMITTEE ON ELECTIVE FRANCHISE AND DECLARATION OF RIGHTS

August 21, 1966

RE: ARTICLE ON SUFFRAGE AND ELECTIONS

The following are the proposed changes in the Article on Suffrage and Elections pursuant to Commission directives received at the Easton meeting on July 17, 1966.

Section 4. Disqualification. The General Assembly shall by law establish disqualifications for voting for mental incompetence and for conviction of serious crime. Any person excluded from voting for conviction of crime shall again be eligible to vote if pardoned by the governor.

Comment:

The Committee believes this section now conforms to the wishes of the Commission expressed at the Easton meeting. In form it follows the Model State Constitution and leaves to the General Assembly determination of the details of exclusion on either ground. The General Assembly shall decide whether exclusion for mental incompetence will turn on commitment, adjudication or some other event. Similarly, the General Assembly shall determine what constitutes a "serious crime."

The second sentence of the section incorporates the common provision for re-enfranchisement of one excluded for conviction of crime. It is considered unnecessary to include a parallel safeguard for those excluded from voting for mental incompetence. Exclusion on such grounds has never been regarded as permanent, and it is highly unlikely that the legislature would exclude anyone from voting for mental incompetence except during the period when that condition exists.

Section 5. Elections. The General Assembly shall by law define residence, establish a uniform system of permanent registration of voters, provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting and protect the integrity of the election process.

Comment:

In the course of the Easton meeting, the chairman and reporter of this Committee were asked if the provision in Section 5 that the General Assembly shall determine legislative districts conflicts with the provisions in Section 5 of the Article on the Legislative Department relative to the matter of decennial redistricting. Since the general plan of the latter Article places the initial burden of districting on the General Assembly and provides an alternative method of proceeding only if the legislature fails to act, it is believed the two Sections 5 are not inconsistent. However, since

this legislative duty is clearly described in detail in Section 5 of the proposed Article on the General Assembly, there appears to be no need for the provision in Section 5 of the Article on Suffrage and Elections. Accordingly, the phrase "determine Legislative Districts" has been deleted from Section 5 of this Article.

Section 7. Local Elections. Voting qualifications for local elections shall be as provided in Section 1 of this Article except that any political subdivision may establish a period of minimum residence not exceeding one year and may extend the right to vote to nonresidents owning taxable real property within its limits.

Comment:

The proposed section is an effort to conform to the position taken by the Commission at the Easton meeting that the suffrage qualifications should be the same for local elections as they are for state and national elections, with the two exceptions provided: political subdivisions may establish longer periods of required residence--up to one year; and political subdivisions may extend the right to vote to nonresident property owners.

The first of these exceptions is deemed advisable for the reason that there is certain to be vigorous objections to any provision commanding local units to allow voting in local elections upon three or even six months residence. Voting in local elections includes voting on school bond issues, library loans, urban renewal issues, etc. The great fear of local units is that the vote on

such matters will be unduly influenced by persons whose residence is essentially temporary (i.e., military personnel, persons working on specific construction projects, government employees, etc.). It is almost certain that some local units will wish to insist upon a residence period that provides at least reasonable indication of permanence.

The second of these exceptions is somewhat broader than that discussed by the Commission to the extent that this option is extended to all political subdivisions and not limited to municipalities. It seems to the Committee that there is no reasonable basis for distinguishing between the two. If it is advantageous for Ocean City to allow nonresident property owners to vote, it may be equally advantageous for surrounding areas of Worcester County--or for counties in southern Maryland eager to attract resort developments. At first this might seem dubious as applied to populous areas such as Baltimore City, Baltimore County or Montgomery County. It is not likely, however, that these areas will elect to use this concession and even less likely, if they do, that it will have any appreciable effect on voting.

At the Easton meeting some sentiment was expressed for stipulating either that Section 5 is to apply only to state and national elections or, under Section 7, that political subdivisions are to be free to regulate their own systems of registration, nomination and administration of elections. The Committee believes that this is probably unnecessary under the proposals of the Committee on Political Subdivisions and Local Legislation and might

even be inconsistent with those proposals. The essence of those proposals is autonomy for political subdivisions subject to express withdrawal by the General Assembly. It would seem that under such a system the full regulation of the election process would reside in the local units unless and until some grave abuse or powerful state interest dictated a withdrawal. A constitutional grant to local units of power to regulate the election process would eliminate the measure of legislative control which the proposals of the Committee on Political Subdivisions and Local Legislation appear to contemplate.

REFERENDUM

In accordance with Commission instructions, the sections on the referendum have been incorporated into the Article on Suffrage and Elections. What was Section 1 on the Referendum in the Fourth Report of this Committee thus becomes unnecessary. It has been eliminated and the remainder of the sections renumbered. Those sections on which some alteration or redrafting was required are set out below.

Section 8. Referendum. If before the date on which any law enacted by the General Assembly is to take effect a petition shall be filed with the _____ *to refer to a vote of the people such law or any part thereof, then such law shall not take effect until thirty days after its approval by a majority of those voting on the question at the next general election;*

provided that any law passed by a three-fifths vote of all the members of each house of the General Assembly shall take effect notwithstanding a referendum petition, but shall stand repealed thirty days after rejection by a majority of those voting on the question.

Comment:

This section has been amended to incorporate Commission directives issued at the Easton meeting. The reference to filing petitions with the Secretary of State has been deleted. The place for filing has been left blank pending proper information from the Committee on the Executive Department. It may be that "office of the governor" will be sufficient.

The "emergency law" provision has been replaced by the "three-fifths vote" qualification as directed.

Section 9. Referendum Petitions. A petition shall be sufficient to refer a law, or any part thereof, to a vote of the people if signed by a number of eligible voters equal to five per cent of the total number of votes cast for governor on the last gubernatorial election /and if petitioners are so distributed as to include not less than five per cent of the eligible voters voting for governor in the last gubernatorial election in each of ten counties./ If more than one-half but less than the full number of signatures required for

any referendum petition be filed before the date on which the law against which such petition is directed is to take effect, the effective date for such law and the time for filing the remainder of the required signatures shall be extended thirty days.

Comment:

It is not entirely clear whether the phenomenon of the "public local law" is to be continued. If it is, a section along the lines (three paragraphs) included in the Fourth Report of this Committee will have to be employed. On the present understanding that the public local laws are not to be continued, this form is offered.

The percentage of eligible voters needed to effect a referendum petition has been increased to five per cent pursuant to the Commission's instructions. The Commission also directed that a qualification be included which would insure that a referendum petition represented a matter of interest to the whole State. The bracketed material is included to accomplish that objective. In essence it requires that the petitioners must not only represent five per cent of the total eligible voters but must also represent at least five per cent of these voters in approximately two-fifths of the counties. (It is understood that the term "county" will include Baltimore City in the proposed constitution.)

The brackets around this qualification are intended as a flag to signal the Committee's urgent request that the Commission reconsider the advisability of this provision. The Committee is unanimous in its opinion that this provision represents a "promise to the ear, broken to the hope" and suggests that a constitutional

provision that purports to include the referendum and at the same time makes it almost unattainable is lacking in candor.

Section 10. Restrictions. No plan for reapportioning the State, no law imposing a tax and no law making an appropriation for maintaining the state government or for aiding or maintaining any public institution shall be subject to referendum.

Comment:

The Commission directed that this section be expanded to include "revenue raising measures" and reapportionment plans. This draft is submitted for that purpose. The Committee directs attention to the fact that "redistricting" is the term usually used with reference to congressional districts, while "reapportionment" is used with reference to state legislative districts.

Respectfully submitted,

Committee on Elective Franchise and Declaration of Rights

CONSTITUTIONAL CONVENTION COMMISSION

SIXTH REPORT

OF THE

COMMITTEE ON ELECTIVE FRANCHISE AND DECLARATION OF RIGHTS

August 21, 1966

RE: THE DECLARATION OF RIGHTS

I. INTRODUCTION

The Committee's view of what should be included in the Declaration of Rights was expressed in its First Report to the Commission. It is deemed appropriate to restate some of the pertinent principles here. It was suggested on that occasion that the drafting of a state constitution be viewed as an act of creation -- the creation of a structure by and through which the power of self-government may be exercised. A Declaration of Rights accompanying such an act of creation is designed principally to reserve and declare those rights of the people which no official, no agency, no transient majority may transgress. The vital and preeminent function of a Declaration of Rights is to define with all possible clarity those rights which the people wish to hold free from any diminution. Rights to be treated with this highest regard must be so formulated as to be capable of protection against even legislative interference. In our constitutional traditions and practice, this has come to mean rights selected, defined and

formulated in such manner that they are capable of judicial protection at the petition of any individual.

In that connection it is important to keep in mind that a Constitutional Convention is not a super-legislature convened to supply all the omissions and correct all the errors of which the legislature may have been guilty over the past 50 or 100 years. Nor is a constitution super-legislation designed to establish appropriate regulations for all human conduct and relations within the affected society for the next 100 years. A well-conceived constitution designs and creates the machinery of self-government through which the actual process of regulation must be carried on. Taken in this setting, a Declaration of Rights is an enumeration of those rights which the people, as individuals, wish to hold beyond the power of government. It should not be a prologue to the constitution, nor a statement of what the agencies of government can do, nor a broadly stated directive as to how a government should do what it is given power to do.

II. THE PROPOSED DECLARATION OF RIGHTS

A. The Committee recommends that the Declaration of Rights be made Article I of the new constitution, to emphasize that it is an integral part of the entire instrument.

B. The Committee recommends the following for adoption as the Declaration of Rights to be submitted to the Constitutional Convention of 1967:

Section 1. All political power originates in the people and all government is instituted for their security, benefit and protection.

Section 2. The people shall have the right peaceably to assemble and to petition the government for the redress of grievances. Freedom of the press and freedom of speech shall not be abridged, each person remaining responsible for abuse of such rights.

Section 3. No law shall be enacted respecting the establishment of religion. No person shall be restricted in the free exercise of religious profession and worship, nor shall any person be disqualified from holding public office or rendered incompetent as a witness or juror because of his opinion on matters of religious belief.

Section 4. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws. Private property shall not be taken for public use without just compensation.

Section 5. No bills of attainder, or ex post facto laws, or laws impairing the obligations of contracts shall be enacted, nor shall any conviction work corruption of blood or forfeiture of estate.

Section 6. The right of the people to be secure in their persons, houses, papers and effects against unreasonable

searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Section 7. Any person accused of crime shall have the right to be informed of the charge against him in time to prepare his defense, to have the assistance of counsel in his defense, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have a speedy and public trial before an impartial jury, without whose unanimous consent he shall not be adjudged guilty.

Section 8. No person shall be subject for the same offense to be twice put in jeopardy of punishment or be compelled in any criminal case to be a witness against himself.

Section 9. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Section 10. The privilege of the Writ of Habeas Corpus shall not be suspended and the provisions of this Constitution shall apply as well in time of war as in time of peace.

Section 11. This enumeration of rights shall not be construed to impair or deny others retained by the people.

III. SECTION-BY-SECTION ANALYSIS OF PROPOSED DECLARATION OF RIGHTS

The Committee's commentary on the proposed Declaration of Rights is to be presented in two parts. In this, the first, a section-by-section analysis is offered. In the second part the discussion of the draft will be offered within the framework of the present Declaration, explaining what disposition has been made of each of the present 45 Articles and the reasons for the action taken.

The philosophy adopted by the Committee is explained in the introduction to this report. The practical, working approach of the Committee has been to conform the language of this Declaration to the language of the Bill of Rights of the United States Constitution on comparable or parallel provisions. The reasons for this approach lie in the constitutional history of recent years. In matters of religious freedom, in matters of the equality of all persons before the law, in matters of the rights of persons accused of crime, in matters of the rights of all persons to be free of arbitrary invasions of their homes and persons, the constitutional developments within our lifetimes have moved us toward a single standard to which agencies of both the state and federal governments must adhere. By adopting the same language as that found in the United States Constitution, an established, and indeed controlling, body of jurisprudence becomes available for guidance in the application of the state constitutional law.

Section 1. All political power originates in the people and all government is instituted for their security, benefit and protection.

Comment: This section takes the place of Sections 1, 4, 6, and 7 of the present Declaration of Rights. The essence of it is a statement of the principle of popular sovereignty. The Committee believes this simple statement is sufficient and is preferable to the rather prolix and sometimes repetitious statements found in the present Declaration of Rights. In its First Report to the Commission the Committee suggested that this section perhaps should contain a statement emphasizing the importance of the General Assembly as the prime agency of representative government. The Committee's present opinion is that such a statement would be largely discursive and not consistent with the Committee's suggested approach to the Declaration of Rights.

Section 2. The people shall have the right peaceably to assemble and to petition the government for the redress of grievances. Freedom of the press and freedom of speech shall not be abridged, each person remaining responsible for abuse of such rights.

Comment: This section is modeled as closely as possible on the First Amendment to the United States Constitution. Such changes in form as have been made are only those necessary to state the somewhat broader prohibition needed in a state constitution. As we are not dealing with a government of limited powers, a formulation such as "Congress shall make no law . . ." cannot be used with the same effect.

One of the objectives of the Committee in its proposed draft is to assemble provisions currently found in rather random fashion in

the Declaration of Rights and to present them in the most coherent and orderly form. Section 2 contains the substance of what is currently found in Articles 13 and 40 of the Declaration of Rights. No significant changes of substance are made. The right of freedom of assembly is spelled out and the right to petition the government is probably somewhat broader than the right to petition the General Assembly.

> *Section 3. No law shall be enacted respecting the establishment of religion. No person shall be restricted in the free exercise of religious profession and worship, nor shall any person be disqualified from holding public office or rendered incompetent as a witness or juror because of his opinion on matters of religious belief.*

Comment: Events of the last decade compel a complete re-examination of the provisions of the Declaration of Rights treating freedom of religion. Under Torcaso v. Watkins, 367 U.S. 488 (1961), Schowgurow v. State, 240 Md. 121, 213 A.2d 475 (1965) and Horace Mann League v. Board of Public Works, 242 Md. 645, 220 A.2d 51 (1966) the formulation of the principle of religious freedom found in Articles 36, 37, and 39 has been found to be in conflict with the First and Fourteenth Amendments to the United States Constitution. The right of citizens to the free exercise of religious belief and persuasion has been held to be far more unqualified than the Maryland Constitution of 1867 was prepared to concede. For that reason the Committee proposes that the constitution deal with the subject in the simple and unqualified terms of proposed Section 3.

It is an approach which states the principle and at the same time declines to state or attempt to state all of the particular consequences or applications that the principle may dictate.

The first sentence of the proposed section is directed to the matter of affirmative state aid or endorsement of religion and in effect adopts the "establishment clause" of the First Amendment. This is consistent with the approach of the Committee in using Bill of Rights language whenever it serves the desired purpose. Certainly there is little point in continuing in the Maryland Constitution language which has been, and will be again, struck down as violative of the United States Constitution. It might be debated whether the establishment clause is the most felicitous expression of the root principle that church and state are to remain separate and apart. Be that as it may, this is the formulation that has enjoyed the fullest exploration and articulation in the courts. It carries with it a known and reasonably well understood body of law, and it retains the adaptability which will undoubtedly be needed as new and different problems present themselves in the future. Another reason for the approach here taken is that the Committee believes that an effort to specify in detail which acts by the state in some way beneficial to religious groups are acceptable and which are not is almost impossible. Just as the present language of Article 36 (nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain, any place of worship or any ministry') provides little guidance on matters of school construction subsidies, bussing and book contributions, so would an effort at this date to anticipate

all the problems and questions of the next 100 years prove equally inadequate.

Consistent with the decisions in the cases referred to above, the second sentence of the proposed section has been cast in a manner intended to indicate complete freedom of the individual to believe or not as his conscience dictates.

Section 4. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws. Private property shall not be taken for public use without just compensation.

Comment: The Committee believes that a simple, direct due process clause incorporates all the protection presently provided by Articles 19, 20, 23, 24 and probably 32 of the Declaration of Rights. The language used is that of the Fifth Amendment and is also substantially the same as in Article 23 of the present Declaration.

The second clause of the first sentence of Section 4 adds an "equal protection" clause to the Maryland Declaration of Rights. The language used is that of the Fourteenth Amendment. The Committee seriously considered expanding the equal protection clause to include a statement such as that found in Section 20 of the new Connecticut Constitution (1965):

> "No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise of his civil or political rights because of religion, race, color, ancestry or national origin.

After considerable discussion, the Committee decided to recommend omission of language similar to that found in the second phrase of the section quoted.

First, it can be noted that the provision is redundant. It adds no protection not already provided by the equal protection clause. This is evident from the great and salutary strides that have been made in eliminating state-sponsored or state-inspired segregation and discrimination under the equal protection clause of the Fourteenth Amendment.

The mere fact that this kind of expression is not absolutely necessary is not alone reason enough for leaving it out if its inclusion is important to a significant segment of the community. The Committee's principal reason for recommending against such a provision is that it would introduce into the Declaration of Rights terms which are indefinite in meaning and indeterminate in scope. Familiar though they are, the terms "civil rights" and "political rights" have no precise meaning. Indeed, they seem to have meant different things at different times. For example, in the Minnesota Constituion, in Article VII on Elective Franchise, Section 2 provides inter alia, no person who has been convicted of treason or any felony, unless restored to civil rights, . . . shall be entitled or permitted to vote at any election in this State." (Emphasis added.) Here the term "civil rights" is used in a sense usually reserved for the term "political rights" -- the right to vote, hold office, hold certain franchises, etc.

The Committee fully recognizes the virtues and advantages of including in the Declaration of Rights the strongest possible state-

ment that individuals' rights before the law should not be affected by race, color or creed. If there were any doubt that these are protected by an equal protection clause, the fuller statement would be recommended without hesitation. The Committee, however, suggests that the advantages attendant upon including what is essentially a statement of principle or an article of faith must be weighed against the hazards of including in a Declaration of Rights terms which are imprecise and perhaps even shifting in meaning.

The Committee also considered the suggestion by Dr. Martin D. Jenkins that the Declaration of Rights include the following:

> "No person shall be discriminated against because of religion, race or color.

The Committee respectfully suggests that the quoted provision amounts to a comprehensive mandate directed to private actions and relationships as well as to acts of the government vis a' vis individual citizens. As such, the Committee believes it sweeps far beyond the principle of equal protection in the Fourteenth Amendment, has no identifiable limits, and carries a potential impact which is impossible for any member of the Commission or Convention to foresee or evaluate. For this reason, as well as for reasons outlined in its First Report, the Committee recommends against its adoption.

Finally, the Committee has added the "eminent domain" provision in the last sentence, using the language of the Fifth Amendment.

Section 5. No bills of attainder, or ex post facto laws, or laws impairing the obligations of contracts shall be enacted; nor shall any conviction work corruption of blood or forfeiture of estate.

Comment. The Committee believes the proposed section incorporates all the protection found in Articles 17, 18 and 27 of the present Declaration of Rights, and adds an express prohibition of enactments impairing the obligations of contracts. In essence this provision presumes a legislature of plenary powers and then, for the protection of individual citizens, forbids certain kinds of legislative acts. With the exception of the one addition noted, this section simply restates, in what the Committee believes to be a more economical and coherent form, protections presently found in the Declaration of Rights.

Technically, "ex post facto" is a narrower term than "retrospective" and both are used in Article 17 of the present Declaration of Rights. The former applies only to enactments retroactively rendering acts criminal or increasing punishment. However, the full text of Article 17 plus the judicial interpretations of it show that the intention of that Article was to impose the narrower limitation. The decisions leave no doubt that it applies only to retrospective laws imposing a criminal penalty. Braverman v. Bar Ass'n of Baltimore, 209 Md. 328, 121 A.2d 473 (1955). While the court has on occasion exhibited concern about enactments retroactively affecting property rights (Thistle v. Frostburg Coal Co., 10 Md. 129 (1856)) and impairing the obligations of contracts

(Elliot v. Elliot, 38 Md. 357 (1873)), in general it was assumed that the required protection was given by Article I, Section 10 of the United States Constitution. The addition of an impairment clause to the proposed section should provide a basis for adequate judicial protection against legislative acts improperly affecting civil (non-criminal) rights and liabilities.

Section 6. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Comment: Proposed Section 6 duplicates the language of the Fourth Amendment. As explained before in more general terms the Committee believes this is advisable in view of decisions of the Supreme Court requiring the states, in matters of search and seizure, to adhere to standards previously imposed solely on federal law enforcement agencies. Since these developments establish one standard to which state enforcement agencies must conform, there appears to be an advantage to setting the same standard for the state's own regulation of its law enforcement processes. By adopting the same language as that found in the United States Constitution, an established body of jurisprudence becomes available for guidance.

It may be noted that the substance of the proposed section is the same as that of Article 26 of the present Declaration of Rights.

The Committee believes the suggested language, in its own right, is cleaner, more direct and consistent with the language used in surrounding sections.

Section 7. Any person accused of crime shall have the right to be informed of the charge against him in time to prepare his defense, to have the assistance of counsel in his defense, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have a speedy and public trial before an impartial jury without whose unanimous consent he shall not be adjudged guilty.

Comment. The Committee believes the proposed section incorporates all the protection provided by Article 21 of the present Declaration and at least clarifies and perhaps enlarges somewhat the protection offered by that Article. Again, to the extent possible the language of this section follows that of the Sixth Amendment. The Committee calls attention to the fact that specific reference to 'indictment' has been eliminated. Such an express provision or reference may be misleading under present criminal practice and, it appears, has unnecessarily injected supposed constitutional issues into questions involving sufficiency of indictments, etc. In light of this omission it might be advisable to specify in some manner that an accused be informed of the charge against him in writing. The present feeling of the Committee is that this is unnecessary as a constitutional stipulation. The manner in which such information is communicated to an accused,

as well as the timeliness, will always be open to scrutiny if a question is raised of compliance or non-compliance with this provision.

The proposed section uses more direct language to convey the idea that any accused is absolutely entitled to be represented by counsel, not merely that he is 'allowed' to have counsel if he can arrange it for himself. The language is essentially that of the Sixth Amendment and the principle is plainly dictated by Gideon v. Wainwright, 372 U.S. 335 (1963).

The proposed section also provides that an accused is entitled to a speedy and public trial.' The present Declaration does not expressly provide for the right to a public trial, though the Sixth Amendment does.

Section 8. No person shall be subject for the same offense to be twice put in jeopardy of punishment or be compelled in any criminal case to be a witness against himself.

Comment: This section provides the protection found in Article 22 of the present Declaration and in addition specifies the double jeopardy principle as one important enough to enjoy constitutional status. The language is substantially that of the Fifth Amendment.

Section 9. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Comment: The Committee believes the proposed section incorporates all the protection given by Articles 16 and 25 of the present Declaration. A 'sanguinary' law in present usage would be one providing for capital punishment, and a law prescribing capital punishment for a relatively minor offense would probably be 'cruel and unusual' by present day terms and definitions. The language duplicates that of the Eighth Amendment and is substantially identical to that of Article 25 of the present Declaration.

Most state constitutions have seen fit to provide expressly for the right to release on bail. Usually, however, this right must then be expressly qualified by stipulating that the right shall not exist in capital cases (or in capital cases and those punishable by life imprisonment, or by specifying offenses for which there shall be no right to bail) 'when the proof is evident or the presumption great.' The Committee considered whether such an express statement of the right to release on bail should be included and decided that it should not. As stated above, the proposed bail provision is the same as that presently found in the United States Constitution and the present Maryland Constitution. In both cases this language has carried the implication of a "right" to release on bail, as witness Rule 777 of the Maryland Rules and Rule 46 of the Federal Rules of Criminal Procedure.

Section 10. The privilege of the Writ of Habeas Corpus shall not be suspended and the provisions of this Constitution shall apply as well in time of war as in time of peace.

Comment: This section includes the substance of Article 44 of the present Declaration and, in addition, incorporates the prohibition presently found in Article III, Section 55. No real change is involved except perhaps to make it clear that no agency or organ of the government may suspend the privilege of the Writ of Habeas Corpus.

Section 11. This enumeration of rights shall not be construed to impair or deny others retained by the people.

Comment: This section is identical to Article 45, the concluding Article of the present Declaration of Rights. The Committee considered including in this section a statement similar in import to that presently found in Article 3 of the Declaration and the Tenth Amendment -- to the effect that powers not delegated to the government are reserved by the people. In light of the difficulty that developed in identifying the powers so reserved and the misgivings of some members of the Committee in suggesting that a state government is one of "delegated" powers, the idea was abandoned.

IV. ANALYSIS OF PROPOSED DECLARATION OF RIGHTS BY COMPARISON WITH PRESENT DECLARATION

For this initial report on the Declaration of Rights the Committee believes it may be helpful to compare what is proposed with what exists. The following exegesis, therefore, will proceed through the 45 Articles of the present Declaration indicating what disposition has been made of each and the reasons for the action taken.

Article 1. It appears to be the practice in most state constitutions to commence the Bill or Declaration of Rights with a statement of the principle of popular sovereignty. Strictly speaking, this is not consistent with the idea expressed in the introduction that such a Declaration should confine itself to a statement of those rights reserved to the people as individuals. At the same time, a statement of the right of the people to change their government when it ceases to serve their needs is not totally inconsistent with the thrust and purpose of a Declaration of Rights. In the present Maryland Declaration this principle of popular sovereignty is expressed at great length and with considerable repetition in Articles 1, 4, 6 and 7. Section 1 of the proposed Declaration proceeds on the premise that the principle can be adequately stated simply and just once.

Articles 2 and 3. (Eliminated.) These two Articles in the present Declaration merely restate the "Supremacy Clause" and the broad "reservation of powers" clause of the United States Constitution. As such they are surplusage in a state constitution and, in any event, out of place in a Declaration of Rights.

Article 4. See discussion of Article 1 above.

Article 5. (Eliminated.) This Article is an historical relic. In 1776 it was important to specify that the principles of the common law of England were to be received and incorporated into the body of the law of this State. Absent such a provision there were no laws or legal principles for the regulation of the ordinary affairs of the citizens. But these "reception" provisions

have long since been exhausted as working principles, and courts feel free to disregard them or to reconsider the "received" principles when changed circumstances cast doubt on the sensible application of such remote rules or statutes. (See Note, 25 Md. L.Rev. 83 (1965).) As to the second clause, referring to acts in force on date of adoption of the Constitution, it would appear that a general enactment clause would be a more appropriate location for such a provision than the Declaration of Rights. Finally, it seems safe to assume that those persons deriving property through Cæcilius Calvert have established good title by this time.

Articles 6 and 7. See discussion of Article 1 above. As to the "free and frequent elections provisions, the Committee, as indicated in the introduction, suggests that this is in the nature of a prologue provision -- an advance announcement of what the constitution is going to provide. If in appropriate places and provisions the constitution does in fact provide for elections which are both free and frequent, an advance announcement that this should be or is to be done is surplusage.

Article 8. (Eliminated.) This Article simply states the principle of separation of powers within the state government. Among state constitutions this provision appears most commonly to be placed in another Article, usually entitled "General Government" or "Distribution of Powers." In a large number of cases such Articles are one-section Articles doing no more than stating this separation of powers principle. Whether or not the Commission would favor adopting this approach, the Committee suggests that this provision is out of place in a Declaration of Rights. It is

worth noting that the United States Constitution has no comparable provision, yet under it most of the jurisprudence of separation of powers has evolved. In that Constitution and in a number of state constitutions it is sufficient that the respective Articles begin with unequivocal provisions that, "All legislative power shall be vested in . . ."; "The executive power shall be vested in . . ."; and "The judicial power shall be vested in . . .".

Article 9. (Eliminated.) This Article appears to the Committee to be unnecessary. Absent some provision in the constitution giving or allowing such power to some person or agency, such power will naturally reside only in the General Assembly. It may be noted that the Article seems never to have been put in issue.

Articles 10 through 12. (Eliminated.) If these Articles are in fact needed (and they have never been put in issue in the life of the present Constitution), the Committee suggests that the Article on the General Assembly would be a more appropriate place.

Article 13. See Section 2 of the proposed Declaration.

Article 14. (Eliminated.) The Committee offers here the same comment it offered in connection with Article 9, unless a provision in the constitution gives such power to any person or agency, such power will reside only in the General Assembly.

Article 15. (Eliminated.) The first clause of this Article has been rendered moot by Harper v. Virginia State Bd. of Elections, ___U.S.___, 86 S.Ct. 1079 (1966). The second clause seems an unnecessary precaution. The balance of the Article, if appropriate

to a constitution, could more properly be placed in the provisions on taxation and finance.

Article 16. See Section 9 of proposed draft.

Article 17. See Section 5 of proposed draft.

Article 18. See Section 5 of proposed draft.

Article 19. (Eliminated.) The history of this Article suggests that it is a 'litigation breeder.' It is too broad to be even precise or accurate, let alone meaningful. It seems the most it could be is a "due process" clause, already provided by Section 4 of the proposed draft.

Article 20. (Eliminated.) Whatever this means or purports to do would seem to be amply covered by the due process provision of proposed Section 4. Annotations to this Article indicate that references to it have been tangential and incidental.

Article 21. See Section 7 of proposed draft.

Article 22. See Section 8 of proposed draft.

Article 23. See Section 4 of proposed draft.

Article 24. (Eliminated.) The Committee freely admits that recommending elimination of this Article is significant. Its reasons for the recommendation are the following:

(a) While this alone is not a sufficient reason for elimination of the Article, the Committee notes that the institution of human slavery is forbidden by the Thirteenth Amendment to the

United States Constitution.

(b) The Committee also observes that if the due process clause in proposed Section 4 does not protect against enslavement, then it does not protect against much of anything.

(c) Most important, the Committee believes that elimination of this Article is the most emphatic way of expressing the idea that human slavery in the State of Maryland is unthinkable in the year 1966. No one would think it necessary to include provisions in the constitution of this State at this time prohibiting cannibalism, human sacrifice or sutteeism. The Committee believes that human slavery is of the same order and would, by an act of silence, consign it to the same classification.

(d) Finally, the Committee directs the Commission's attention to the second clause of Article 24 and suggests that this stands as an illustration of the inadvisability of incorporating declamations on contemporary political issues in a constitution or Declaration of Rights. A century later the provision still sits there looking pointless, a little foolish and more like an angry aside than a serious constitutional provision.

Article 25. See Section 9 of the proposed Declaration.

Article 26. See Section 6 of proposed draft.

Article 27. See Section 5 of proposed draft.

Articles 28 through 32. (Eliminated.) Articles 28 and 29 are completely non-functional, with the latter hardly even appropriate to our present condition and circumstances. Sections 30, 31

and 32 presumably are to be covered, to the extent needed in a state constitution, in the provisions on the militia. (See the Fourth Report of the Committee on Miscellaneous Provisions, pp. 11 ff.)

Article 33. (Eliminated.) Without venturing any opinion on the appropriateness of this Article as a constitutional provision, the Committee suggests that the subject matter of this Article can be better dealt with in the article on the judiciary.

Article 34. (Eliminated.) Without venturing any opinion on the appropriateness of this Article as a constitutional provision, the Committee suggests that the subject matter of this Article can be better dealt with in the article on the executive.

Article 35. (Eliminated.) The Committee suggests that this Article does not belong in the Declaration of Rights and probably does not belong in the Constitution at all. The history of the first clause suggests that in its flat, unqualified form it has produced all manner of unanticipated and unpredictable consequences. In that way and to that extent, it has been a troublemaker. The Committee suggests that the subject matter of this first clause can be properly left to the General Assembly to be dealt with in the whole setting of conflict of interest, prescribed qualifications for particular offices, etc.

At this stage of history the second clause of this Article appears a little foolish as a constitutional provision. If the problem, as it seems to be, is the possible corruption of public officials, this provision nicks off but a very small corner of the subject.

Articles 36 through 39. See Section 3 of proposed draft and comments. With particular reference to Article 38, the Committee notes that, whatever its intrinsic merits or demerits, in its present form, as amended in 1948, it seems to cancel itself out for all practical purposes.

Article 40. See Section 2 of proposed draft.

Article 41. (Eliminated.) The Committee suggests that this Article serves no presently useful purpose. The Court of Appeals has consistently held that this Article prohibits only monopolies granted by the State. It is not a state antitrust law, nor would it be adequate for any such purpose. This Article has been a part of the Declaration of Rights since the Constitution of 1776. At that time the citizens of the new State were extremely wary of state-conferred or, more accurately, "Crown-conferred" monopolies. That danger now seems to be largely a matter of history. There are, of course, occasions and situations where it is incumbent on some agency of government to grant or recognize privileges or prerogatives of a limited number of persons or organizations. It is also true that the exercise of such a power may be abused. The Committee believes, however, that on balance the processes of representative government are a better and more adaptable check on such abuses than a sweeping constitutional provision which cannot, in present day conditions, be applied literally. The General Assembly in the exercise of its plenary powers should and can provide the protection this venerable Article is designed to offer.

Article 42. (Eliminated.) The Committee suggests that this Article provides an archaic and unnecessary precaution. In any event, such a provision is out of place in a Declaration of Rights.

Article 43. (Eliminated.) With some trepidation the Committee suggests the elimination of Article 43. It appears to enjoy considerable popular affection and support. However, the Committee considered the following in recommending its elimination:

(a) If this is intended to provide the General Assembly with power to provide for the general welfare, it should probably be included in the article on the legislature.

(b) If this is intended as a statement of "rights" of the people, individually or collectively, it is potentially a breeder of "ski trail" amendments. It will be recalled that at a Commission meeting earlier this year Dr. John P. Wheeler, Jr. apprised the Commission of the experience of New York in a similar setting. The New York Constitution started with an apparently unexceptionable provision that forest preserves "shall be forever kept as wild forest lands." In 1941 a constitutional amendment was required to provide that the state could construct "not more than twenty miles of ski trails thirty to eighty feet wide on the north, east and northwest slopes of Whiteface Mountain. . .". Nor was this the end of the matter -- similar constitutional amendments have been required each time the State of New York wished to open still more ski trails for the use and pleasure of the citizenry. The potential for mischief and annoyance of grand constitutional generalities is unmeasurable.

(c) The last clause of this Article provides still another striking example of the hazards of attempting to deal with complex and subtle problems through the medium of sweeping statements of 'rights.' In the opinion of many informed observers, what this clause has produced is a mechanism for the convenience of land speculators -- fully sanctified by inclusion in the Declaration of Rights and perhaps correctable only by a constitutional amendment. If such a matter is to be dealt with at all in the constitution (a matter which is debatable), it belongs in the provisions on taxation and finance where it can be handled in a proper setting, in the presence of identifiable reference points and with all necessary particulars.

Article 44. See Section 10 of the proposed draft.

Article 45. See Section 11 of the proposed draft.

CONSTITUTIONAL CONVENTION COMMISSION

SEVENTH REPORT

OF THE

COMMITTEE ON ELECTIVE FRANCHISE AND DECLARATION OF RIGHTS

September 18, 1966

RE: ARTICLE ON SUFFRAGE AND ELECTIONS

The following corrections in the Article on Suffrage and Elections are now recommended by the Committee on Elective Franchise and Declaration of Rights. The new matter is indicated by underscoring.

Section 4. Disqualification. The General Assembly by law shall establish disqualifications for voting for mental incompetence and for conviction of serious crime and may provide for the removal of such disqualifications.

Comment:

Rather than attempt to spell out the detail of restoration of voting rights upon executive pardon, it is felt that this can be properly left to the legislature. Certainly if disqualification is to be by statute, then reinstatement should likewise be provided by law. The General Assembly can take into account pardons by other states and federal pardons. The added language grants the power needed.

Section 7. Local Elections. Voting qualifications for local elections shall be as provided in Section 1 of this Article except that any ~~political subdivision~~ municipal corporation /incorporated town and city/ may establish a period of minimum residence not exceeding one year and may extend the right to vote to nonresidents owning taxable property within its limits.

Comment:

The intention here is to except only those elections below the county level. In other words, the elections by cities and towns. If "municipal corporation" is to be given a definition elsewhere as a city or town, then this is the proper phrase. We believe the intention here is shown and that at this point the matter can be left to the Committee on Style.

Section 8. Referendum. If, within sixty days from the date on which a bill becomes law, a petition is filed with the office of the governor to refer the law to a vote of the people, the law shall be submitted to a vote at the next general election. If rejected by a majority of those voting on the question at the next general election, the law shall stand repealed thirty days thereafter.

If the petition is filed before the date on which the law is to take effect, then, unless the law is one passed by a three-fifth vote of all the members of each house of the General Assembly, it shall not take effect

until thirty days after its approval by a majority of those voting on the question.

Comment:

This section is extremely difficult to draft because it is necessary to take into account laws passed with a June-1 effective date as well as with a pre-June-1 effective date. Also, there is the problem of considering that bills may be passed and then signed by the governor or they may be passed over veto, in which case they are not signed by the governor. Add to this the complication of providing for suspension in cases where the law is not passed by a three-fifth vote, and the mass confusion becomes apparent.

The offered draft is significantly different from the prior provision. It is considered that this is workable and retains for the people an adequate remedy.

Section 9. Referendum Petitions. A petition shall be sufficient to refer a law, or any part thereof, to a vote of the people if signed by a number of eligible voters equal to five per cent of the total number of votes cast for governor in the last gubernatorial election, provided that not more than one-half of such required number shall be voters residing in any one county.

Comment:

The provision for not more than half of the petitioners being from one county is as now provided in the present referendum Article.

This was directed by the Commission at the last meeting. With a change to a 60-day filing period in Section 8 it is felt that the 30-day extension upon filing one-half of the signatures is no longer necessary.

Section 10. Restrictions. No plan for ~~reapportioning the State~~ legislative reapportionment or congressional redistricting, no law imposing a tax and no law making an appropriation for maintaining the state government or for aiding or maintaining any public institution shall be subject to referendum.

Respectfully submitted,

Committee on Elective Franchise
and Declaration of Rights

C O N S T I T U T I O N A L C O N V E N T I O N C O M M I S S I O N

EIGHTH REPORT

OF THE

COMMITTEE ON ELECTIVE FRANCHISE AND DECLARATION OF RIGHTS

September 18, 1966

RE: PROPOSED PREAMBLE AND THE DECLARATION OF RIGHTS

P R E A M B L E

We, the people of the State of Maryland, in recognition of the need for an orderly system of self-government for our State and the benefits to be derived therefrom, and, in order to form a more perfect system of democratic government and to preserve the inalienable rights and universal principles of liberty, freedom and equality of all men, do ordain and establish this Constitution, and do herein enumerate the civil, political and religious rights and liberties to be fostered, guaranteed and protected by the State for the enjoyment of all citizens, and do herein grant to the State of Maryland the powers and authority necessary and proper to promote, maintain and preserve the peace, dignity, health, safety and general welfare of our citizens.

COMMENT:

The above draft of a Preamble is still to be considered a working draft. Other versions are to be prepared and will be

considered. It was felt that the Commission should be shown the present direction of the Committee's thinking so that advice can be given.

* * *

ARTICLE I - DECLARATION OF RIGHTS

COMMENT:

The first three sections are written in the alternative. The first version copies insofar as is possible the language of the present Declaration. For the reasons set forth in the accompanying memorandum the Committee does not recommend these. The second version is recommended by the Committee. The Committee's draft is simple, concise and meaningful.

Reference to current Articles	
1	*Section 1. That all Government of right originates from the People and is instituted solely for the good of the whole.*
4	*The People of this State have the sole and exclusive right of regulating the internal government and police thereof, as a free, sovereign and independent State.*
7	*The right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government.*

Reference to current Articles

6 *All persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct.*

- - - -

Proposed by Committee *Section 1. All political power originates in the people and all government is instituted for their security, benefit and protection.*

- - - -

Reference to current Articles

13 *Section 2. The people shall have the right peaceably to assemble and to petition the government for the redress of grievance.*

40 *Any person shall be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege.*

- - - -

Proposed by Committee *Section 2. The people shall have the right peaceably to assemble and to petition the government for the redress of grievances. Freedom of the press and freedom of speech shall not be abridged, each person remaining responsible for abuse of those privileges.*

Reference to current Articles

(U.S. 1st) *Section 3. No law shall be enacted respecting the establishment of religion.*

36 *Every man shall have the right to worship or not to worship as he thinks most acceptable.*

36 *No person shall by any law be molested in his person or estate on account of his religious persuasion or profession or for his religious practice or the lack thereof.*

No person shall be disqualified from holding public office or rendered incompetent as a witness or juror because of his opinion on matters of religious belief.

\- - - -

Proposed by Committee *Section 3. No law shall be enacted respecting the establishment of religion. No person shall be restricted in the free exercise of religious profession and worship, nor shall any person be disqualified from holding public office or rendered incompetent as a witness or juror because of his opinion on matters of religious belief.*

COMMENT:

The following sections show the corrections which the Commission directed should be made at the last College Park meeting. The new matter is indicated by underscoring.

Section 4. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws. No person shall be subject to discrimination by law because of religion, race, color or national origin. Private property shall not be taken for public use without just compensation.

Section 5. No bills of attainder, or ex post facto laws, or laws impairing the obligations of contracts shall be enacted, nor shall any conviction work corruption of blood or forfeiture of estate.

Section 6. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and in their oral or other communications against unreasonable interceptions shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, or the communications sought to be intercepted.

Section 7. Any person accused of crime shall have the right to be informed of the charge against him in time to prepare his defense, to have the assistance of counsel in his defense, to be confronted with and to examine under oath the witnesses against him, to have compulsory process for obtaining witnesses and to have a speedy and public trial in the jurisdiction where the crime is alleged to have been committed, before an impartial jury, without whose unanimous consent he shall not be adjudged guilty.

Section 8. No person shall be twice put in jeopardy of criminal punishment for the same offense or be compelled in any criminal case to be a witness against himself.

Section 9. Excessive bail shall not be required. Neither excessive fines nor cruel and unusual punishment shall be provided by law or imposed by the courts.

Section 10. The privilege of the Writ of Habeas Corpus shall not be suspended and the provisions of this Constitution shall apply as well in time of war as in time of peace.

Section 11. This enumeration of rights shall not be construed to impair or deny others retained by the people.

Respectfully submitted,

Committee on Elective Franchise
and Declaration of Rights

C O N S T I T U T I O N A L C O N V E N T I O N C O M M I S S I O N

NINTH REPORT

OF THE

COMMITTEE ON ELECTIVE FRANCHISE AND DECLARATION OF RIGHTS

October 24, 1966

RE: PREAMBLE

The work of this Committee will conclude with the adoption of a preamble, which is somewhat ironic because possibly the first work of the Commission should have been the formulation of a preamble.

The purpose of a preamble is to serve as an introduction to the constitution so as to aid the interpretation of the rest of the document. It should contain an adequate statement of the purposes of the constitution and the guiding intention of the convention. All but two of the state constitutions contain a preamble. In scope and content they range from the short, terse introductory phrase to those which invoke the blessing of deity and discourse at length on the benefits of liberty and the securing of freedom for future generations.

The present Maryland Preamble reads as follows:

> We, the People of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution in this State for the sure foundation and more permanent security thereof, declare:

The Preamble to the United States Constitution states thusly:

> We, the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

In contrast to these is that proposed in the Model State Constitution which provides:

> We, the people of the state of _____, recognizing the rights and duties of this state as a part of the federal system of government, reaffirm our adherence to the Constitution of the United States of America; and in order to assure the state government power to act for the good order of the state and the liberty, health, safety and welfare of the people, we do ordain and establish this constitution.

So as to show the variance even among those preambles currently being written by constitutional drafters,we quote below the preambles to three constitutions of our sister states:

FLORIDA:

> We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, insure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution, first adopting and recognizing the supremacy of the principles stated in the following:

HAWAII:

> We, the people of the State of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, by the people and for the people, and with an understanding heart toward all the peoples of the earth, do hereby ordain and establish this constitution for the State of Hawaii.

KENTUCKY:

> We, the people of the Commonwealth of Kentucky, grateful to Almighty God for the civil, political and religious liberties we enjoy, and invoking the continuance of these blessings, do ordain and establish this Constitution.

It would seem fitting that Maryland have an original preamble, not one which merely paraphrases those used by other states. One further thought comes to mind. It will be remembered that our approved declaration repeats little or none of the old language of the present declaration. It was felt that the old poetic style and phrasing should give way to more concise, meaningful language. We eliminated from the declaration some of the old, well-intentioned but vaguely-worded provisions, which were thought to be practically unenforceable. In Committee many of the items deleted were spoken of as "nice things to say," but they were found not to be appropriate for a clear, meaningful, enforceable constitution. Perhaps now, in the preamble, it would be proper to speak in broad, general principles and intentions. Perhaps here we can capture some of the "flavor and spirit" of our past.

It appears that the preamble is not per se an operative part of the constitution, although it may be used as a guide to interpretation. This being so, there is justification in departing somewhat from our earlier-stated aims of clear enforceability of each provision. If we are to give expression anywhere to broad, general ideals to which the people of our State subscribe, the preamble is the place to do it.

With the above comments in mind the Committee offers the following preamble:

We, the people of the State of Maryland, in recognition of the need for an orderly sustem of self-government for our State and the benefits to be derived therefrom, and in order to form a more perfect system of democratic government and to preserve the inalienable rights and universal principles of liberty, freedom and equality of all men, do ordain and establish this Constitution, and do herein enumerate the civil, political and religious rights and liberties to be fostered, guaranteed and protected by the State for the enjoyment of all citizens, and do herein grant to the State of Maryland the powers and authority necessary and proper to promote, maintain and preserve the peace, dignity, health, safety and general welfare of our citizens.

This draft is offered without any strong assertion that this is the best or only preamble which can be used. It is to be remembered that in this area there is no precise right or wrong provision. To a large extent the style of a preamble reflects the personal tastes and preferences of those writing it. It follows therefore that there will be a wide divergence of ideas on the subject.

Another draft offered to the Committee by Kenneth Lasson, one of our researchers, is more poetic and stylistic. It provides as follows:

> *To secure Peace unto all, to preserve the blessings of liberty and justice for ourselves and our posterity, to declare the truths to be self-evident, that all men are created equal and all are endowed with the rights of life, liberty and the pursuit of happiness, and to prolong our unique colonial heritage of civil, religious and political toleration and respect in a government of, by and for the people; We, the people of the free State of Maryland, pledging to each other our lives, our fortunes and our honor for the preservation of our liberty, do solemnly ordain a declaration of rights and frame of government; and for this we humbly invoke the blessing of Almighty God.*

The Committee has invited Commission members to submit their own drafts, but to date no others have been received.

Respectfully submitted,

Committee on Elective Franchise
and Declaration of Rights

C O N S T I T U T I O N A L C O N V E N T I O N C O M M I S S I O N

P R E A M B L E

BY

KENNETH LASSON

September 18, 1966

To secure Peace unto all, to preserve the blessings of liberty and justice for ourselves and our posterity, to declare the truths to be self-evident, that all men are created equal and all are endowed with the rights of life, liberty and the pursuit of happiness, and to prolong our unique colonial heritage of civil, religious and political toleration and respect in a government of, by and for the people; We, the people of the free state of Maryland, pledging to each other our lives, our fortunes and our honor for the preservation of our liberty, do solemnly ordain a declaration of rights and frame of government; and for this we humbly invoke the blessing of Almighty God.

MEMORANDUM ON DECLARATION OF RIGHTS

At the recent College Park meeting the Commission rejected Sections 1,2 and 3 as proposed by the Committee for the Declaration of Rights. These sections relate to: (1) sovereignity, (2) freedom of assembly, press and speech, and (3) freedom of religion. It had been recommended that the verbose, archaic and cumbersome provisions of the 1867 Declaration be discarded and that simple, concise, intelligible statements be utilized. This recommendation met with considerable opposition at College Park.

The Committee was told that our proposed draft was a "sterile, test-tube like recital", and that to delete the ancient and venerable phraseology used by prior drafters "would be tantamount to casting aside the cross botonee on our State flag." The sections in question were referred back to the Committee with the directive that they be re-drafted in a way that, as to Section 1, the words, flavor and spirit of the present Articles 1,4,6 and 7 would be retained; and as to Section 2, the current Articles 13 and 40 would be preserved and as to Section 3, the existing first part of Article 36 would be retained.

As directed, the Committee has re-studied this matter and debated it at length. Our conclusions follow.

Firstly, we fully recognize and appreciate our proud heritage as Marylanders. We are not unmindful of tradition and the history of our State. However it is to be noted that what we cherish of our past is not just words amd phrases, but rather the acts and deeds, the heroics of the men and women in our history. Our State Motto: "Fatti Maschii Parole Femine," finds its

The Committee has traced the provisions of the current Articles 1, 4, 6, 7, 14, 36 and 40 back through the Conventions of 1867, 1864, 1851 to the Constitution of 1776. There have been deletions and additions of phrases but for the most part virtually identical language was used in the Constitution of 1776. Traces of Article 36 can even be found in the Toleration Act of 1649. In the main it can be said that the words were used by men living in the spirit and times of 1776. Phrases were used to capture the thoughts, events and circumstances as known to the men of that era.

It is the conviction of this Committee that if thoughts, events and circumstances have changed during the 200 year interval, it would be extremely inappropriate to blindly re-copy such words and phrases. As a corollary it can be said that to utilize those same words with the intention of expressing modern and different ideas is equally absurd. No one would think of describing our Gemini space capsule as a "flying machine".

The late great Justice Oliver Wendell Holmes once said:

> "A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and time in which it is used."

Towne v Eisner 245 US 418 (1918)

This Commission should be charged as Traditionalists with preserving the ideals, the principles, the rights and duties which our fore-fathers bequeathed to us with their life and blood; but, some of us as lawyers, and all of us as Constitutional draftsmen should be charged with the duty of using words which express those same principles and rights in language clearly understood by our citizens of today and tomorrow.

It is true that the Conventions of 1851, 1864 and 1867 saw fit to continue the Declaration in the same form as originally written in 1776. In justification the 1867 Committee on the Declaration of Rights reported that these rights were first stated in the "good old times of 1776". Is that good and sufficient reason? Mr. John H. Barnes, a member of the 1867 Convention cautioned: "The Convention is not legislating for the times of 1776. They

were here to frame a form of government comfortable to the present times". (Perlman-Debates 1867). He did not prevail. The eminent Mr. Henry Stockbridge spoke of the 1776 Declaration which we still have with us, as being "sonorous generalities and superfluous rhetoric".

It is interesting to note that in a window display at the Central branch of the Enoch Pratt Library, some of the very provisions which are now sought to be preserved in the name of tradition, are circled under the title "Some curiosities in our present Constitution". It is submitted that curiosities belong in archives, not ina living statement of the basic law of our State. It may also be noted that in every statement of our work, the present Constitution is criticized as being "out-of-date", "too long and too detailed", etc., and the people are promised that the new Constitution will be concise, confined to fundamentals and suited for today's society".

As to the Article on religiour freedom, it would be a gross miscarriage to argue that religious freedom as we know it today bears any semblance to the provisions of the Act Concerning Religion of 1649. The "Toleration Act", as it came to be known, is a misnomer. If anything, it granted but limited toleration to those who professed belief in the divinity of Christ. It said nothing of separation of Church and State. Further, not only did it not protect Jews, Unitarians and non-believers, it in fact subjected those persons to severe penalties, including the death penalty for anyone who "shall deny our Savior, Jesus Christ, to be the son of God". The Toleration Act is described in "History of Maryland: Province and State" by Andrews, as an unfortunate compromise between the Catholic and Protestants on one side and the Puritan element on the other (pp 92-98) Smith's "Religion under the Barons of Baltimore", refers to the Act as "a most disgraceful piece of intolerance". However, despite how we now see it, viewed in the light of the day in which it was written it did offer a measure of advancement in the idea of religious toleration. And this is the point. We should not lift expressions out of another era and mislead ourselves into believing they will

have some meaning in a modern setting. Our founding fathers did believe and practice religious tolerance, and this we can be and are proud of, but it cannot be found in the written texts of that day. This is noted by the historian Andrews:

> "Because of this conflict of opinion as to the terms of the Charter, set forth in a day when language was so often used to conceal thought, we must judge George and Cecil Calvert by their acts rather than by the limitations of expression so generally imposed in an age where tolerance was by the officials of Church and State the last thing to be tolerated .... These liberal individuals dared not express their views too openly; when they advanced the doctrine of toleration." (history of Maryland, p 13)

This points up the futility in attempting to preserve the recognized and long-standing rights and principles through use of words written in a different time and setting. To demonstrate the difference in the times we have only to look at Art.XXXlll of the 1776 Declaration which reads in part: "... All persons, professing the Christian religion, are equally entitled to protection in their religious liberty,...." This "right" still remains in the present Article 36, of course without the underlined words. However, despite deletions and editing it still does not express what we mean today by religious freedom.

Much the same criticism can be made as to the continuance of the words of the current Articles 1, 4, 6 and 7. These are the expressions of popular sovereignty. The basic principle of sovereignty is certainly still believed in, but it is submitted that it would be inappropriate to express it in the form in which it was stated in Revolutionary times. In 1776 the spirit of rebellion was in the air. We were in the midst of forcibly breaking away from British rule. Because of suffering through a period of rule without representation, the people were overly sensitive and protective of their right to change the form of government. Since the whole question of a peoples' right to overthrow their government by any means is one which is debatable, it would be fair to say that some of the expressions used in these Articles (1, 4,6 and 7) were made to some extent in justification of their recent revolutionary acts.

It is of interest to note that our present Declaration was originally written (1776) and rewritten (1851, 1864 and 1867) in times of unique unrest. In the first instance the Revolution was uppermost in mind, in the second the events leading up to the Civil War were of paramount importance. In both instances it is obvious that preoccupation with the events and circumstances of the day flavored the expressions used in writing the Constitution. For example, Article 1 as originally written in the 1776 Declaration only contained the first half of the present Article 1: "That all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole". The second half was added in the 1851 Convention. If we have doubt as to its intended meaning we have only to look at the full text which was then proposed:

> "... And they have at all times the unalienable right to alter, reform or abolish their form of government in such manner as they may think expedient. And that any portion of the people of this State shall have the right to secede and unite themselves and the territory occupied by them to such adjoining State as they shall elect."

The second sentence was not adopted, but the overall meaning and purpose and the general thinking of the drafters is abundantly clear.

It is also significant to note that the 1864 Convention deleted the words underlined below from this same section:

> "and they have at all times, <u>according to the mode prescribed in this Constitution</u>, the unalienable right to alter, reform, etc...."

Again the thinking of times shows through. It is suggested that if today we are not in accord with the thinking of those earlier days, if we recognize we are living in a different atmosphere, then there is little justification for re-echoing the words and phrases used to express such since abandoned ideas. On the contrary every effort should be made to express each of the rights to be stated in the Declaration in clear,concise, meaningful language. It is to be remembered that this document will be read by our children in school. Let us not confuse them in the name of tradition. Let each and every man, woman and child be able to read and understand the rights which they have and enjoy as citizens of Maryland.

It is respectfully submitted and urged that the Commission reconsider and rescind its directive that the Committee rewrite Sections 1, 2 and 3 in the language of the current Declaration.

Charles Della

Leah Freedlander

John Hargrove

Stanford Hoff

Melvin Sykes,

Lewis Asper

James Gentry, Chairman

[illegible]